

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND

DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 581/SRT/2023 (AY: 2011-12)

(Physical Hearing)

Dhirubhai Nanjibhai Kachchadia, B-9/83, Near Ambaji Temple, Haria Hospital Road, GIDC, Vapi (Gujarat)-396395. <b>PAN No. ACPK 1953 R</b>	Vs.	I.T.O. Ward-2, Vapi.
Appellant/ Respondent		Respondent/ Assessee

Assessee represented by	Shri Rajesh Upadhayay, A.R.
Department represented by	Shri S.M. Keshkamat, CIT-DR
Date of Institution of Appeal	24/08/2023
Date of hearing	25/10/2023
Date of pronouncement	29/11/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the Assessee is directed against the order of learned National Faceless Appeal Centre, Delhi (in short, the NFAC)/ Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 17/08/2023 for the Assessment Year (AY) 2011-12. The assessee has raised following grounds of appeal:

- "1. That on facts and circumstances of the case, Ld. CIT (Appeals) NFAC, Delhi, has grossly erred in holding that assessing officer has rightly assumed jurisdiction over the case and proceedings u/s 147 and 148 of the Act have been validly initiated by the assessing officer, ignoring the fact that related fact of exempt income was available with him from day one of filing of ROI u/s 139 of the act.*
- 2. That on facts and circumstances of the case, Ld. CIT (Appeals) NFAC, Delhi, has grossly erred in upholding addition of Rs. 2,68,52,300/- and Rs. 45,86,102/- w.r.t. sale of agriculture land bearing Survey No- 207/1-A Block NO- 264 and Survey No- 207/1 -B Block NO- 262 located at village Lajpor, Tal Choryasi, Dist- Surat on the ground that both these pieces of land are located in Surat city does not amount to the exempt assets u/s 2(14) of the income tax act in view of Honourable Supreme Court judgement in the case of Sarifabibi Mohamed Ibrahim - 204 ITR 631.*

3. *Alternatively, and without prejudice to our ground no- 1 and 2, following ground is raised :-*

*That on facts and circumstances of the case, Ld. CIT (Appeals) NFAC, Delhi, has grossly erred to uphold action of the AO in not following procedure laid down u/s 50C(2) of the act, especially, when the appellant has claimed lesser sale proceed as compared to the value fixed by SVO. Further, Ld CIT(A) has also erred in not allowing time to file valuation report of RVO before him in first appellate proceeding.”*

2. Brief facts of the case are that the assessee is individual, filed his return of income for A.Y. A.Y. 2011-12 on 07/08/2012 declaring income of Rs. 23,61,200/- and agricultural income of Rs. 16,10,971/-. The return of income was processed and accepted under Section 143(1) of the Income Tax Act, 1961 (in short, the Act). Thereafter, the case was reopened on the basis of information that the assessee sold immovable property situated at R.S. No. 207/1-A, Block No. 264, in village Lajpor, Taluka –Choryasi, District Surat on 26/04/2010. The sale consideration of said land on the sale deed was shown at Rs. 95,60,600/-. The Assessing Officer on receipt of said information, noted that the assessee has not offered capital gain in the return of income. On the basis of such information, the Assessing Officer made his belief that he has a reason to believe that income of assessee has escaped assessment within meaning of Section 147 of the Act. The Assessing Officer after recording reasons, issued notice under Section 148 of the Act on 20/03/2018, with prior approval of PCIT. The assessee in the said notice was asked to furnish return of income within 30 days of service of notice. The Assessing Officer recorded that the assessee not responded to the said notice. However, the assessee vide application dated 22/09/2018 submitted that the return filed originally may be considered as return in response to notice under Section 148 of the Act. The Assessing Officer after serving statutory notices under Section 143(2),

proceeded for reassessment. During reassessment, the Assessing Officer find that the assessee has purchased the said land on 01/07/2007 for a sale consideration of Rs. 4,42,000/-. Further, as clause (3) of page No. 12 of purchase deed shows that the land situated within the City limit. On the basis of such observation, the Assessing Officer was of the view that as the land situated within the city limit, hence falls in the ambit of capital asset under Section 2(14) of the Act. Again on verification of sale deed executed by the assessee for transfer of land, the Assessing Officer noted that the land was sold to Sachin Udhyognagar Sahakari Mandli Ltd for non-agricultural purpose. The Assessing Officer recorded the assessee failed to establish that he was doing any agricultural activity in the land before transfer. In clause (17) of page No. 9 of sale deed, the that land is shown as reserve for non-agricultural purpose and industrial development as per Section 88(1)(6) of Bombay Tenancy and Agricultural and Land Act, 1948 vide notification dated 14/11/1991 published by the Revenue Department, Government of Gujarat. In the sale deed, nowhere it is mentioned that it is agricultural land only word "Land" is mentioned. The Assessing Officer after referring the decision of Hon'ble Apex Court in the case of Sarifa Bibi Mohamed Ibrahim & Other 204 ITR 631 (SC) wherein it was held that if the land falls within the definition of capital asset, surplus earned on sale of which is liable to tax as capital gain. The Assessing Officer further noted that the Stamp Valuation Authority valued the said land for the purpose of registration at Rs. 2.73 crores, however, the value on the documents is shown at Rs. 95,60,600/- only. Since the consideration shown on the registered document is lower than the value determined by the Stamp Valuation Authority,

therefore, provisions of Section 50C is attracted. Section 50C of the Act create a legal fiction whereby apparent consideration is substituted by valuation by Stamp Valuation Authority and capital gain is to be calculated accordingly as per value determined by the Stamp Valuation Authority. The Assessing Officer on the basis of aforesaid observation, noted that the assessee had purchased land on 01/06/2007 and sold on 26/04/2010 within a period of 36 months and the gain earned on such transfer to be treated as 'short term capital gain' (STCG). The assessee has purchased the land for a consideration of Rs. 4,42,000/- and incurred expenses of Rs. 21,700/-, therefore, cost of acquisition of land was considered at Rs.4,63,700/-. Assessing Officer accordingly worked out the short term capital gain of Rs. 2.68 crores (Rs. 2,73,16,000 – 4,63,700). On the basis of such working, the Assessing Officer issued show cause notice as to why short term capital gain should not be taxed and added to the income of assessee.

3. The Assessing Officer recorded that in response to the show cause notice, the assessee filed his written submission on 12/12/2018. The Assessing Officer without recording the contents of reply held that nothing is brought on record therefore, the reply of assessee is not acceptable. The assessee raised objections that reasons recorded were not provided and that no opportunity for filing objection was allowed to the assessee. The assessee was served notice dated 20/03/2018 under section 148 with the direction to file return of income within 30 days but the assessee failed to file such return of income, thus failed to comply notice under section 148. The assess has not filed any objection. The Assessing Officer on the basis of his aforesaid observation proceeded for

re-assessment and added short term capital gain of Rs. 2.68 crores in the assessment order dated 24/12/2018 passed under Section 143(3) r.w.s. 147 of the Act.

4. Aggrieved by the additions and reopening, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee challenged the validity of reopening, invocation of Section 50C as well as addition of Rs. 2.68 crores on account of short term capital gain. Before the Id. CIT(A), the assessee filed detailed written submission. The submission of assessee are recorded in para 4 of impugned order. The assessee in his submission submitted that the assessee while filing return of income has declared income of Rs. 23.61 lacs and also shown share of profit at Rs. 2.60 lacs. In the return, the assessee has shown profit on sale of agricultural land of Rs. 1.11 crore as exempt income. The case of assessee was reopened and notice under Section 148 was issued. The assessee requested the Assessing Officer to treat the original return filed under Section 139 as return in response to notice under Section 148 of the Act. The Assessing Officer noted accepted such request of assessee and proceeded for assessment. The assessee sold two agricultural lands, first land was valued at Rs. 95,60,600/- and other land at Rs. 16,28,900/- and claimed at exempt from tax. The Assessing Officer adopted the value of one land at Rs. 2.73 crores and thereby worked short term capital gain at Rs. 2.68 crores and added to the income of assessee. For other land, the Assessing Officer valued market value at Rs. 46,55,102/- and worked out short term capital gain at Rs. 45,86,102/- and added to the total income.

5. The assessee further submitted that the Assessing Officer while recording the reasons of reopening, recorded that assessee sold immovable property at village-Lajpur, Distt. -Surat for a sale consideration of Rs. 95,60,600/- and that stamp valuation authority valued the sale property at Rs. 2.73 crores and further Section 50C is applicable. The land is situated within City limit and that assessee has not shown long term capital gain in his return of income. Thus, he has reason to believe about escapement of income of Rs. 95,60,600/- by invoking provisions of clause (b) of Explanation-2 of Section 147 of the Act. The basis of reopening is not in order for various reasons. First of all, the immovable property sold by assessee was an agricultural land situated at village-Lajpur, District-Surat, which is not within limit of Surat City. Secondly, the Assessing Officer issued letter dated 23/01/2018 which was replied by assessee as per para 4 of reasons recorded. The assessee made it clear that he has sold agricultural land to Sachin Udhyognagar Sahakari Mandli Ltd , for their industrial purpose. The nature of land is "old tenure", thus not a capital asset. So, it was not required to show in the return of income for A.Y. 2011-12 as taxable income. Thirdly, reopening was made on incorrect fact that income of Rs. 90,60,600 has escaped assessment for this year. Fourthly, the assessee is not supplied reasons recorded and completed assessment without following the procedure. Assessing Officer invoked provisions of Explanation-2(b) of Section 147 in arbitrary manner. Fifthly, the assessee filed return of income and shown agricultural income and exempt income on sale of agricultural land. On the basis of such submission the assessee prayed to quash the reopening.

6. On merit of addition, the assessee submitted that the assessing officer made addition of Rs. 2.68 Crore as per his finding in para 8 of assessment order by treating the land as capital asset as it falls in the City limit. The assessee stated that the observation of assessing officer that land is situated in City area is incorrect. The nature of land is specifically mentioned that the land is situated in Village Lajpor, Taluka Choryasi Surat. The Land was sold to Sachin Udyog Nagar Sahakari Mandli for their industrial purpose, such facts will not change the nature of the land. The Talati cum Mantri of village Lajpor has issued certificate that R.S No. 207/1A, Block No. 264 is not situated within the municipal area of Surat, which is 19 Km away from municipal limit. The population of Village Lajpor is less than 10,000 as per 2001 censuses. The assessee purchased the agriculture land in the year 2007. The assessee carried out agriculture activities. The nature of the land was never changed. There was no construction or development on the land. On the basis of above facts, the assessee submitted that the land was not a capital asset so STCG is not leviable and addition thereof is liable to be deleted. The assessee also objected about the valuation made by the stamp valuation authorities. The jantri value of agriculture land was Rs. 6,00/- per square meter and the assessee executed the sale deed @ Rs. 850/- per square meter. As the buyer was the industrial society and wanted to use land for industrial purpose, therefore, the stamp valuation authorities charged at the higher rate of jantri value. The assessee furnished the details of the prevailing rate of jantri value. The assessee also submitted that one of the seller of similar land Govindbhai Devrajbhai (HUF) having PAN: AAHFG 3724 G, also sold his land having area of 4350 square

meter at the same village for a consideration of Rs. 30,45,000/- that is @ Rs. 700/- per square meter on 12.04.2010. The Department has accepted their transaction, no reopening in their case was made. Facts of assessee's case are identical with the facts of Govindbhai Devrajbhai (HUF). It is settled law that two assessees on identical facts cannot be treated differently. The assessee also stated, that Assessing Officer has not followed the procedure laid down under Section 50C(2) and also violated principal of natural justice. Merely, the incorrect charging of stamp duty by Stamp Valuation Authority, cannot create additional liability on the assessee to pay tax on such valuation. The stamp duty was paid by buyer and not by the assessee. The Assessing Officer mechanically invoked the provision of Section 50C which is illegal and incorrect.

7. The submission of assessee was forwarded to the Assessing Officer for furnishing his remand report, on the validity of reopening as well as on merits that assessee has sold agricultural land and that in support of his claim, the assessee furnished the evidences that assessee's land is agricultural land, out of municipal limit and certificate of Talati, details of jantri rates determined by State Government by considering such evidences as additional and fresh evidence as per Rule-46 of Income Tax Rules, 1962. The Assessing Officer was directed to verify the evidences and to give his remand report with regard to admission and consideration thereof. The Assessing Officer was also directed that as per assessment order, it was mentioned that report of DVO was called for but not received till the passing of assessment order, the Assessing Officer was required to clarify if such report of DVO was received, if so, forwarded the same along with his comment.

8. The Assessing Officer vide his letter dated 12.07.2023 furnished his remand report. The Assessing Officer reported that assessee was asked to furnish the details and evidence before Assessing Officer for preparation remand report and that assessee has not responded. The Assessing Officer reported that reopening was made with approval of Competent Authority and reasons recorded were provided. Thus, he justified his action in reopening. On the issue of nature of land, that it was agricultural land and not falls in the category of capital asset under section 2(14). The Assessing Officer reported that if the land falls in the jurisdictional of Municipality or in an area which is not more than 8 kilometers from a local limits of Municipality shall be considered as capital asset. The assessee in the sale deed has mentioned that impugned land falls within the city limits (shaherisankul). The Assessing Officer also reported that once the land is considered as capital asset, it has no concern to whom it was sold. On the certificate of Talati, the Assessing Officer submitted that Talati-cum-Mantri, is not competent to decide city limits and distance of property from such limits. On the issue of jantri rate, the Assessing Officer reported that such rates are decided by Stamp Valuation Authority. On the question of report of DVO, the Assessing Officer reported that matter was referred to DVO and the assessee has not contested the market value adopted by Assessing Officer despite granting opportunity by Valuation Officer. On the admission of additional evidence, the Assessing officer contended that neither he refused to admit such evidences nor the assessee prevented by sufficient cause for producing evidences in the course of assessment proceedings despite giving

sufficient opportunity. The Assessing Officer requested not to admit any new evidence as per Rule-46A of the IT Rules.

9. The copy of remand report was provided to the assessee for his comment. The assessee filed his comment vide reply dated 09.08.2023. Such contents are recorded in para-7.1 of order of Ld.CIT(A). The assessee in his reply / rejoinder submitted that in response to direction of Assessing Officer, the assessee furnished complete details on 29.04.2023. The Assessing Officer considered such details and evidence while furnishing his remand report. The objection of Assessing Officer is not correct that assessee has not furnished complete details. On merit, the assessee reiterated his earlier contention that assessee disclosed exempt income in the returned of income. The land sold was agricultural land as recorded in the Revenue record. Land was used for agricultural purposes. Income derived from agricultural operation is shown in the returned of income. The assessee also pointed out various criteria for determination of nature of land and relied on decision of Hon'ble jurisdictional High Court in the case of CIT vs. Sidharth Desai dated 22.09.1981.

10. The Ld.CIT(A) after considering the assessment order, submission of assessee, remand report furnished by Assessing Officer and rejoinder by assessee, confirmed the action of Assessing Officer on reopening by taking view that reopening was based on information available on record and after obtaining prior approval of Ld.PCIT. On merit of the addition, the Ld.CIT(A) held that assessee sold immovable property, out of Survey No.207/1A, Block No.264 located at Lajport Taluka Choriasi on 26.04.2010. The Assessing Officer on the basis of narration on the sale deed that land is located in the city limits treated

the land as capital asset. In the sale deed, it is mentioned that land is situated in Industrial Park and that because of industrial activities agricultural activity are stop. The primary contention of assessee is that land is appearing as agricultural land in the revenue record and assessee has paid mashul for the land and Talati has issued a certificate that land is not situated in Surat Municipal Corporation and that population of Rajpore is less than 10,00 as per last census. The Ld.CIT(A) held that any land falling under the jurisdiction of Municipality, subject to other condition will not be considered as agricultural land and to be treated as capital asset. The Assessing Officer in his remand report rightly pointed out that Talati-cum-Mantri is not competent authority to decide the city limits and distance of property from such limit, the village itself can be within the prescribed distance from the Municipal limit as per Section 2(14) of the Act. The Assessing Office has pointed out that agricultural activity are not possible in this land. On the claim of assessee, that assessee has shown agricultural income in his returned of income and argued that agricultural activities are carried out in the said land, the Ld.CIT(A) held that assessee has owns various agricultural land in his individual or joint ownership and mere offering of agricultural income does not prove that agricultural activities were carried out in the impugned land during last two-three years. The Ld.CIT(A) wile referring the decision of Hon'ble Apex Court in the case of Sarifabibi Mohamad Ibrahim reported in 204 ITR 631 (SC) held that to ascertain the true corrected and nature of land, it must be seen whether it has been put to use for agricultural purpose for a reasonable span of time prior to relevant date. In this case the land was intended to be use for industrial purpose in future,

therefore the condition held by Hon'ble Apex Court was satisfied. On the contention of assessee is that assessee has not applied for non-agriculture (NA) permission, the Ld.CIT(A) held that the land was situated in industrial park area, no agricultural activity was possible and future use of this clearly nonagricultural and has been sold for non-agricultural purpose. On the basis of such observation, the Ld.CIT(A) confirmed the action of Assessing Officer in treating the land as capital asset and thereby confirmed the addition of short term capital gains. Further aggrieved the assessee has filed present appeal before the Tribunal.

11. We have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and the Ld. Commissioner of Income-tax-Departmental Representative (Ld.CIT-DR) for the Revenue. Ground No.1 relates to validity of reopening under section 147 rw.s. 148.The Ld. AR for the assessee submits that the reasons recorded was not correct that assessee has shown the transaction of land and the surplus earned on such land was shown as exempt being it was agricultural land. The assessee has shown exempt income in his returned of income. The Assessing Officer wrongly invoked provision of Section 50C against the agricultural land. The Assessing Officer wrongly recorded that on page-12 of sale deed the party has mentioned that land is within city limits. The Ld AR for the assessee submits that he has filed the relevant part of sale deed alongwith its true English translation. In the sale deed, the parties clearly mentioned that "*juni sarat*", which means old tenure land. The other conditions are that buyers are agriculturists and does not hold excess land for the purpose of land ceiling. So far as observation of Assessing Officer that land is within city

limits, the parties have mentioned "*shehri sankul aavali chhe*" Means falls in urban development area. Other conditions are that no further permission is required to sale the land. The Ld. AR for the assessee submits that municipal area or municipal limits are absolutely distinct and different from urban development area. The land situated in municipal area is considered as capital asset, however, the land situated in urban development area is not at all covered under municipal area. Thus, the assuming of jurisdiction for reopening is absolutely baseless and misconception of factual aspect and nature of land. Therefore, the reopening based on incorrect fact is liable to be quashed /set aside.

12. On the merit which is the subject-matter of Ground No.2 and 3 the Ld. AR for the assessee reiterated all contention in his submission, which were made before Ld.CIT(A). The Ld.AR of the assessee submits that he has filed copy of Land Revenue Record, certificate of Tehsildar about the nature of land. The details of municipal limit extension. He has also filed various notifications about inclusion of various area while making extension of Surat Municipal Corporation from time to time as per details on page Nos. 72 to 84. The Ld. AR of assessee further submits that State Government in their muster plan has declared the area of Lajpore as reserve for Industrial Development vide Notification dated 14.11.1991 copy of such notification is filed on page No.93 to 94 of the paper book. The Ld.AR of assessee submits that the Lajpore village was not included in the municipal limit of Surat Municipality Corporation. The land of Lajpore village was notified for Industrial Development for urban development, however, facts remains the same that it was never included in the municipal

area till the assessee sold the land to the buyers. The Ld.AR of the assessee filed that he has filed enough evidence to substantiate that he owned agricultural land, sold as agricultural land, mere falling in the urban development area will not change its character for bringing in the ambit of section 2(14) of the Act. The Ld.AR of the assessee submits that once the land is treated as agricultural land, all other issues either of reopening or legal fiction of Section 50C will render academic. The Ld.AR of the assessee that he has a good case on merit as well as on the validity of reopening which is based on incorrect assumption of fact. To support his various contentions, the Id AAR for the assessee relied on the following case laws;

- Shri Dheer Singh vs. ACIT in ITA Nos.3861 to 3865/Del/2013 dated 30.05.2014,
- ACIT vs. IS Leather ITA No.1553/Kol/2011 dated 31.07.2012,
- Anilkumar Kantilal Trivedi vs. ITO dated 17.03.2023,
- Jasbir Singh vs. ITO ITA No.426/ASR/2018 dated 16.01.2020,
- CIT vs. Batra Bhata Company (2010) 321 ITR 526 (Del),
- PCIT vs. Anthony John Pereira (2020) 425 ITR 0134 (Bom),
- ITO vs. Keshaval Ratanji Patel ITA No.1246/AHD/2010 dated 15.03.2013,
- Gerge GeeVargheese vs. ITO ITA No.3004/CHny/2018 dated. 10.05.2023,

13. On the other hand, Ld.CIT-DR for the Revenue supported the order of lower authorities. The Ld.CIT-DR submits that Assessing Officer followed the due procedure before issuing notice under section 148. Reasons were recorded on the basis of information received by Assessing officer that assessee has sold land and has not offered any capital gains while filing returned of income. The Ld.CIT-DR for the Revenue submits that information was sufficient for assumption of jurisdiction and recording reasons for reopening. No full proof

facts is to be established at the time of reopening. On the merit, the Ld. AR of the assessee submits that Assessing Officer has brought sufficient material on record to show the fact that land in question was a capital asset, therefore he fully supported the order of lower authorities.

14. We have considered the submission of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated the case law relied on by Ld. AR for the assessee. The Assessing officer reopened the case of assessee on the basis of information that assessee has shown land situated in city limit and that has shown consideration on the document at Rs.9560600/- and the stamp Valuation Authority valued the land for the purpose charging stamp duty at Rs.2.73 crores and that assessee has not shown long term capital gains. The Assessing Officer after serving notice under section 148 proceeded for assessment. In the assessment order, the Assessing Office made addition of Rs.2.68 crores by reducing the cost of acquisition and brought the remaining surplus to taxation under the head "capital gains" as short term capital gains. The Assessing Officer while treating the gain as short term capital gains recorded that assessee has purchased the said land on 01.06.2007 and sold on 26.04.2010, within the period of 36 months. The Assessing Officer was also of the view that land being situated within the city limit is a capital asset and the Stamp Duty Authority determined the value of land at Rs.2.73 crores, therefore, the provision of Section 50C is attracted. We find that Assessing Officer made reference for DVO for valuation of assets on the date of transfer however, report of DVO was not received, the Assessing Officer brought the surplus earn to taxation under the head "short term capital gains". The Ld.CIT(A) on filing

detailed written submission, though called the remand report on various submissions and evidences of the assessee, however, still the action of the Assessing Officer was confirmed. We find that the main contention of assessee right from the beginning is that the impugned land situated in rural area of village Lajpore, which does not fall within the limit Surat Municipal Corporation. Merely, State Government declared the area of village Lalpore for industrial use would not if so facto will not bring the area in a Municipal limit.

15. The assessee before us has explained that the Assessing Officer picked up the word ""*shehri sankul aavali chhe*", the real meaning of such words is that land falls in urban development area. On appreciation of such contention, we find merit in the submission of Ld. AR for the assessee that mere falling of land within the urban development area or notified area for industrial development of said area would not automatically bring the area in municipal limit unless and until a separate notification is not issued by State Government for including a particular area within municipal limit. No such material was brought on record by Assessing Officer. The Assessing Officer simply assume the jurisdiction on the basis of certain recital in the sale deed and formed his opinion that the impugned land falls in city limit. We further find that before us the assessee has filed sufficient evidence in the form of Land Revenue Record that said land was used for agricultural purposes by the certificate of Land Revenue Authority. Further, the assessee has filed certificate of Gram Panchyat that village Lajpore is not under the area of Surat Municipal Corporation. The assessee has also filed notification of State Government about extension of limit of municipality from time to time, copy of which is available at page No.72 to 81 of paper book,

wherein the village Lajpore is not included in Surat Municipal Corporation. The assessee has also filed extract / details from the website of Home Department of Government of Gujarat, wherein the village Lajpore is administered under Panchayat Raj Act and administered by Sarpanch, meaning thereby the provision of Village Panchayat is not ceased to exist. The population of village is less than 10,000 as per Population Census,2011, copy of such details are available on page No.82 to 84 of the paper book. The assessee has also filed notification of Revenue Department of State Government, wherein the land of village Lajpore (Lajpore) is declared as reserve for non-agricultural and industrial development. As recorded above, that by mere declaration of area under industrial development, it would not be automatically include in municipal limit. For bringing the area in municipal limit a separate notification of State Government is required. In the notification placed on record about extension of Municipal limit of Surat Municipal Corporation, the area of village Lajpore is not included in municipal limit.

16. We find that this combination in Ambaben Jamubhai Patel Vs ITO in ITA No. 3021/AHd/2014 dated 13.04.2022 while considering the issue if the Hazira Industrial Development area is municipal area or not, held that agriculture land falls in Industrial development area would not be treated as land falls in municipal limits of Surat Municipal Corporation by treating it as deemed municipality. In the said case it was held that the land falls in the notified area cannot be treated as capital asset as per section 2(14) of Income Tax Act and compensation received on its acquisition will be exempt for taxation under section 10(37). Thus, on the basis of the various evidence filed by the assessee

and the facts explained before us, we are of the considered view that the assessee has sold agriculture land which cannot be considered as capital asset and the surplus earned on its sale would not be taxable. So far as reliance by Id CIT(A) on the case law of Sarifa Bibi Mohamed Ibrahim & Other (supra) is concerned, we find that the facts of said case are different with the facts of the case in hand. In case of Sarifa Bibi Mohamed Ibrahim & Other (supra), the land of assessee was within the heart of Surat City that is adjacent to Surat Railway Station, however in this case the land is situated in rural area of Village Lajpore. Thus, the ground No.2 of the appeal is allowed.

17. Considering the facts that we have allowed the appeal on merit, therefore, adjudication of other grounds of appeal have become academic.

18. In the result, this appeal of assessee is allowed

Order announced in open court on 29<sup>th</sup> November, 2023.

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

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

Surat, Dated: 29 /11/2023

*\*Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat