

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No.403/Ahd/2022
Assessment Year: 2012-13**

Shalimar Farms Pvt. Ltd., 15, Pratima Society, Opp. Dada Saheb Na Pagala, Gujarat University Road, Navrangpura, Ahmedabad – 380 015. [PAN – AACCS 1042 F]	Vs.	The Income Tax Officer, Ward – 4(1)(3), Ahmedabad.
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**ITA No.404/Ahd/2022
Assessment Year: 2012-13**

Sudama Farms Pvt. Ltd., 15, Pratima Society, Opp. Dada Saheb Na Pagala, Gujarat University Road, Navrangpura, Ahmedabad – 380 015. [PAN – AADCS 9790 H]	Vs.	The Income Tax Officer, Ward – 4(1)(2), Ahmedabad.
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**ITA No.405/Ahd/2022
Assessment Year: 2012-13**

Shanti Farms Pvt. Ltd., 15, Pratima Society, Opp. Dada Saheb Na Pagala, Gujarat University Road, Navrangpura, Ahmedabad – 380 015. [PAN – AACCS 1124 N]	Vs.	The Income Tax Officer, Ward – 4(1)(3), Ahmedabad.
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ITA No.406/Ahd/2022
Assessment Year: 2012-13

Sejal Farms Pvt. Ltd., 3, Ghanshyam Park Co-op. Housing Society, B/h. Paraskunj Society, Satellite Road, Joadhpur, Ahmedabad – 380 015. [PAN – AADCS 9786 R]	Vs.	The Income Tax Officer, Ward – 4(1)(1), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Ms. Nupur Shah, AR	
Revenue by	Shri B.P. Srivastava, Sr. DR	
Date of Hearing	21.10.2024	
Date of Pronouncement	22.11.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

These four appeals are filed by four different Assesseees against four different orders, all dated 09.09.2022, passed by the CIT(A)-11, Ahmedabad for the Assessment Year 2012-13 for all the appeals.

2. Since facts and issues involved in all these four appeals are identical and that these four appeals were heard together, we deem it appropriate to dispose of all these appeals by this consolidated order for the sake of brevity and convenience. We will first take up the appeal of the assessee in ITA No.403/Ahd/2022 for Assessment Year 2012-13. In this appeal, the assessee has raised the following grounds :-

“1. *The Ld. CIT (A) has erred in law and on facts in partly allowing the appeal. He ought to have allowed the appeal fully in accordance with the grounds of appeal raised by the appellant before him.*

1. **Challenging the validity of notice issued u/s, 148 of the Act for reopening the assessment u/s.147 of the Act as well as passing the order u/s. 143(3) r.w.s.147 of the Act.**

1. *The Ld. CIT (A) has erred in law and on facts in confirming the action of the Ld. A.O. in issuing the notice u/s.148 of the Act for reopening the*

assessment u/s.147 of the Act as well as passing the order u/s.143(3) r.w.s. 147 of the Act.

2. *The Ld. CIT(A) has erred in law and on facts in not considering the fact that reopening of the case of the appellant under Section 147 of the Act by the Ld. A.O. merely on the basis information received from the ITO Ward 2(3)(5) Surat without application of mind in absence of any tangible material and/or independent clinching evidence as well as cogent material evidence on record for reopening of the case of the appellant and therefore, in view of various judicial pronouncements of the Hon'ble Jurisdictional Gujarat High Court and various other High Courts, the reopening of the case of the appellant is merely on borrowed satisfaction.*
3. *The Ld. CIT(A) has not properly considered various judicial pronouncements relied upon by the appellant.*

II. Addition on account of Long Term Capital Gain Rs.86,451/-

1. *The Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.86,451/- out of total addition of Rs.3,43,810/- on account of Long Term Capital Gain as made by the Ld. A.O.*
2. *The Ld. CIT(A) has erred in law and on facts in not properly considering the submission made by the appellant wherein, it was contended that the property sold by the appellant company was litigated property and there were various litigations in the said property and it was not possible to sale the property at market rate and the necessary evidence in respect of the litigation are mentioned in the sale deed and hence, provisions of Section 50C does not apply in the case of appellant.*
3. *The Ld. CIT(A) has erred in law and on facts in not considering the contention of the appellant that if the difference between the valuation adopted by the Stamp Valuation Authority or and that declared by the appellant is less than 10 per cent, the A.O. should adopt the value as declared by appellant in view of various judicial pronouncements of various courts. In the case of appellant, the sale value declared by appellant in the return of income in respect of land at Rundh is Rs.9,49,89,978/- and the value as determined by the District Valuation Officer (DVO) is Rs.10,34,91,000/- which is approximately 8.95% higher but less than 10% and hence the value adopted by the appellant is to be accepted by the Ld. A.O.*
4. *The Ld. CIT(A) has erred in law and on facts in not properly considering various Judicial pronouncements relied upon by the appellant.*

III. Addition on account of exempt income claimed on account of sale of agricultural land of Rs.46,96,043/-

1. *The Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.46,96,043/- on account of exempt income claimed on sale of agricultural land situated at Village Anandej, Sanand bearing Revenue No.89/90 on 30.10.2011 u/s.2(14)(iii) of the Income Tax Act.*
2. *The Ld. CIT(A) has erred in law and on facts in not properly considered the submission filed by the appellant.*
3. *The Ld. CIT(A) as well as the Ld. A.O. erred in law and on facts in not properly considering the fact that the land purchased by the appellant company was agricultural land and when sold by appellant was also agricultural land, but the appellant has not carried out any agricultural operation on the same. The Ld. CIT(A) as well as Ld. A.O. failed to appreciate that for claiming exemption u/s.2(14)(iii) the conditions required to be fulfilled are that the distance of land sold by should be more than 8 kms. from Municipal Corporation and the population of Village should be below 10000 then it is a rural agricultural land which is outside the purview of Capital Asset, and in present case the said conditions are fulfilled and hence the entire gain on sale of said land is exempt u/s.2(14)(ii) of the Act. The land must be used for agricultural purpose and agriculture income must be shown in return of income is not a prerequisite for claiming exemption u/s.2(14)(iii) of the Act.*
4. *That the Ld. CIT(A) and Ld. A.O. has erred in law in appreciating that the distance of land sold by appellant is more than 8 kms. from Ahmedabad Municipal Corporation and the population of Anandej Village is below 10000 and hence, is a rural agricultural land which is outside the purview of Capital Asset and hence the entire gain on sale of said land is exempt u/s.2(14)(iii) of the Act.*
5. *The Ld. CIT(A) has erred in law and on facts in not properly considering various judicial pronouncements relied upon by the appellant.*

The appellant reserves its right to add, amend, alter or modify any of the grounds stated hereinabove either before or at the time of hearing.

PRAYER

The appellant therefore respectfully prays that :-

1. *The action of the Ld. CIT(A) in confirming the reopening of assessment by the Ld. A.O by issuing the notice u/s.148 of the Act and passing of the order u/s.143(3) r.w.s. 148 of the Act may kindly be quashed.*
2. *The addition of Rs.86,451/-confirmed by the Ld. CIT(A) out of total addition of Rs.3,43,810/- on account of Long Term Capital Gain may kindly be deleted.*

3. *Addition of Rs.46,96.043/- confirmed by the Ld. CIT(A) on account of exempt income claimed on account of sale of agricultural land may kindly be deleted.*
- 4 *Such and further relief as the nature and circumstances of the case may justify.”*

3. The assessee company filed its return of income on 29.09.2012 declaring total income of Rs.9,38,360/-. The said return was processed under Section 143(1) of the Income Tax Act, 1961. The case was reopened under Section 147 of the Act by issuing notice under Section 148 of the Act on 26.03.2019 after recording reasons for initiating proceedings under Section 147 of the Act on the ground that the sale deed of the property sold at Survey No.39 for Rs.9,49,89,978/- are between 33 parties including the assessee having equal share in second part of the parties for 15.25% share as per the payment details given in the deed. On the basis of stamp duty paid of Rs.63,11,200/-, the stamp value of the property was at 4.9% and thus it will become to Rs.12,88,00,000/- whereas the assessee has shown value of the sale deed at Rs.9,49,89,978/- resulting in difference of Rs.3,38,10,022/- for which provisions of Section 50C of the Act would apply. As indicated in the sale deed, second part of the parties' share would come to Rs.1,96,47,152/- wherein the assessee's share would come to Rs.13,09,810/-. While recording the reasons for reopening, the Assessing Officer observed that in the receipt of return of income the assessee has shown capital gain of Rs.9,38,357/- after deducting the cost of acquisition of the property at Rs.27,643/- from the full value of consideration of the property of Rs.9,66,000/- as shown in the sale deed. In response to the notice under Section 148 of the Act, the assessee filed return of income on 23.04.2019 showing income of Rs.9,38,350/-. The reasons recorded was provided to the assessee and notice under Section 143(2) of the Act was issued on 29.04.2019. Notice under Section 142(1) of the Act issued on 11.07.2019 and on 16.07.2019. The assessee filed its reply alongwith the details. The assessee submitted before the Assessing Officer that he has made a reference to the Deputy Collector (Stamp Duty) regarding market value as per Jantry rate of the property and sought time before the Assessing Officer. In response to the assessee's reply on 12.10.2019 regarding notice under Section 142(1) of the Act dated 09.10.2019, the Assessing Officer observed that the agricultural land can be only by ancestral farmers strictly not otherwise. The Assessing Officer further observed that

there is no provisions under Section 63A of the Bombay Tenancy and Agricultural Land Act, 1968 for the purchase and acquisition of the agricultural land by the company as non-agricultural and a company cannot be said to be a cultivator of agriculturist, so far as the assessee company even if the company involved in the activities of growing of crops, market gardening, horticulture etc. as the activities carried out by the assessee is the business of the company the assets held by the company is business assets. Thus, the Assessing Officer rejected the claim of the assessee made for the exemption income on account of sale of agricultural land and Rs.46,96,047/- was taxed as capital gain on sale of land during the year under consideration. The Assessing Officer also made addition of Rs.12,82,167/- as Long Term Capital Gain thereby observing that in assessee's case Section 50C of the Act is not applicable for the reason that where the consideration received are accruing as a result of transfer by an assessee of a capital asset, being land or building or both is less than the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall for the purpose of Section 48 of the Act be deemed to be the full value of the consideration received or accrued as a result of such transfer.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that ground no. I (1, 2 & 3) is not pressed. Hence, ground no. I (1, 2 & 3) is dismissed.

6. As relates to ground no. II (1 to 4), the Ld. AR submitted that the CIT(A) was not right in confirming the addition of Rs.86,451/- out of total addition of Rs.3,43,810/- on account of Long Term Capital Gain as made by the Assessing Officer. The property sold by the assessee company was litigated property and there were various parties in the said property and it was not possible to sell the property at market rate and the necessary evidence in respect of the litigation was mentioned in the sale deed and hence provisions of Section 50C of the Act does not apply in assessee's case. The Ld. AR further submitted that if the difference between valuation adopted by the Stamp Valuation Authority or that declared by the assessee is less than 10%, the Assessing

Officer should have adopted the value as declared by the assessee in view of various judicial pronouncements of various Courts. The Id. AR further submitted that in the case of the assessee, the sale value declared by the assessee in return of income in respect of land at Rundh was Rs.9,49,89,978/- and the value as determined by the District Valuation Officer is Rs.10,34,91,000/- which is approximately 8.95% higher but less than 10% and hence the value adopted by the assessee is to be accepted by the Assessing Officer. The Ld. AR relied upon the decision of the Tribunal in the case of Bhojison Infrastructure Pvt. Ltd. vs. ITO (ITA No.395/Ahd/2022, order dated 01.03.2023).

7. The Ld. DR submitted that the CIT(A) has in fact taken cognisance and made the addition only to the extent of Rs.86,451/- thereby giving the finding that valuation report of the District Valuation Officer and various judicial pronouncements, the sale consideration determined by the District Valuation Officer vide report dated 27.12.2019 is full and final for the Assessing Officer while computing the capital gain in the case of the assessee. Since as per District Valuation Officer's report dated 27.12.2019, full value of contract in the case of the assessee comes to Rs.10,52,451/- (1.10% of Rs.10,34,91,000/-). Thus, the difference in sale consideration as per DVO's report and sale consideration shown by the assessee comes to Rs.86,451/- (Rs.10,52,451/- minus Rs.9,66,000/-). Thus, the Ld. DR relied upon the order of the CIT(A)

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the CIT(A) has categorically accepted the fact that the full consideration of value in assessee's case is coming to Rs.10,52,451/- and the difference is approximately 95% which is less than 10% and therefore, this was an accepted fact by the Revenue. Therefore, as per the third proviso to Section 50C of the Act brought on Statute w.e.f. 01.04.2019, the Tribunal on various occasions has applied the said Section retrospectively as the difference is less than 10% in the actual value taken than the DVO's value. Besides this, while going through the other aspect such as valuation adopted by the Stamp Valuation Authority and that of declared by the assessee, there is no much difference and in fact the addition sustained is also minimum. Therefore, ground no. II(1 to 4) is allowed.

9. As relates to ground no. III (1 to 5), the Ld. AR submitted that the CIT(A) was not right in confirming the addition of Rs.46,96,043/- on account of exempt income claimed on sale of agricultural land situated at village Anadej, Sanand on 30.10.2011 under Section 2(14)(iii) of the Act. The Ld. AR submitted that the CIT(A) has not at all considered the assessee's submissions in its true sense. The Ld. AR further submitted that the land purchased by the assessee company was agricultural land and this has been notified to the Authorities through the order of the Deputy Collector dated 06.02.1995 which mentions Section 63 and Rule 36 of the Tenancy Rules (The Gujarat Tenancy and Agricultural Land Act, 1968) and agricultural land can be sold to a non-agriculturist provided appropriate permission is obtained from the Collector or from the Authorised Officer. Thus, the assessee has rightly purchased the land from the agriculturist which is agricultural land and the same is prior to 1995. The assessee has given all the details related to the specific survey numbers and the permission obtained for these plots and the said plots held by the assessee were sold between the years 1998 & 2003 with the permission received from the Deputy Collector (Naya Collector). In fact, the sale deed also mentions the said Gujarat Tenancy and Agricultural Land Act, 1968 and also mentions the original agriculturists land owners including the permission obtained from the prescribed authority. Thus, this was a valid transfer. The Ld. AR submitted that the Exhibit-I related to the permission given by the Deputy Collector (Naya Collector) dated 06.02.1995 was not before the CIT(A).

10. The Ld. DR submitted that the assessee has sold the land but while purchasing, as the assessee was not an agriculturist and the provisions of Section 63 of the Act should not be taken into account as agricultural land cannot be sold to the commercial entities. The Assessing Officer has rightly made the addition and denied the exemption claimed by the assessee on account of sale of agricultural land.

11. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the document given by the assessee before us related to the order in respect of the Gujarat Tenancy and Agricultural Land Act, 1968 issued by the Deputy Collector (Naya Collector) dated 09.07.1995 was not before the Assessing Officer as well as before the CIT(A) and in fact these documents required verification in consonance with the other documents and the assessee submitted

before the assessment proceedings as well as before appellate proceedings and needs verification. Since the relevant documents were not there on record before the authorities, it will be appropriate to remand back this issue to the file of the CIT(A) for proper adjudication of the issue, after verifying these documents and decide as per the Income Tax Statute. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice. Thus, ground nos. III (1 to 5) is partly allowed for statistical purpose.

12. Thus, ITA No.403/Ahd/2022 for Assessment Year 2012-13 is partly allowed for statistical purpose.

13. As relates to ITA No.404/Ahd/2022, ITA No.405/Ahd/2022 and ITA No.406/Ahd/2022, all for the Assessment Year 2012-13, the facts are identical as they were also parties to the said land transaction itself and, therefore, in respect of ground nos. II & III the observations made by us will be applicable in these three appeals as well. Thus, ground no. II in all these three appeal are allowed.

14. Ground no. III in all these three appeals are partly allowed for statistical purpose in consonance with the directions mentioned hereinabove for ITA No.403/Ahd/2022 for Assessment Year 2012-13.

15. In the result, all the four Appels are partly allowed for statistical purposes.

Order pronounced in the open Court on this 22nd November, 2024.

Sd/-

(MAKARAND VASANT MAHADEOKAR)
Accountant Member

Sd/-

(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 22nd November, 2024

PBN/*

Copies to: (1) *The appellant*
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By order

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*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*