

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री गगन गोयल, लेखा सदस्य, के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI GAGAN GOYAL, AM

आयकर अपील सं./ITA No. 1254 & 1255/JPR/2024  
निर्धारण वर्ष / Assessment Years : 2012-13

Sh. Om Parkash Behind Police Line, Saipau Road, Dholpur H.O., Dhaulpur- 328001.	बनाम Vs.	Income Tax Officer, Ward-4, Bharatpur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AFKPO0813M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Rahual Pandya, Adv.  
राजस्व की ओरसे / Revenue by : Shri Gautam Singh Choudhary (JCIT-DR)

सुनवाई की तारीख / Date of Hearing : 10/12/2024  
उदघोषणा की तारीख / Date of Pronouncement: 17 /01/2025

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These two appeals filed by the assessee are directed against two different orders of the Id. CIT(A) dated 14.08.2024 & 20.08.2024, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2012-13 in the matter of Section 147 and 271(1)(c) of the Act respectively.

2.1 In ITA No. 1254/JPR/2024, the assessee has marched this appeal on the following grounds:-

“ 1. That order of Learned Assessing authority is bad in law, illegal and against facts and circumstances of the case.

2.i. That learned Assessing Authority grossly erred in law and facts in making additions of Rs. 9,86,770/- U/s 45 Long term capital Gain.

ii. That the Humble appellant has sold out an Agriculture Land Khasra No 889 Area 9 Bigha 9 Bishwa situated at Village Badraitha Tehsil Bari Distt Dholpur for Rs 6,00,000/- on dated 13.10.2011 which is outside the Preview of Capital Asset as defined U/s 2(14) of the Income Tax Act.

iii. That the Ld. ITO, Bharatpur has not verified the basic facts of the case & with predetermined Mind additions were made stamp duty value of Rs. 9,86,770/- in the total income under head of capital gain.

3. That order of learned Assessing Authority is based on assumptions and presumptions and against real facts of the case.

4. That further submissions in support of appeal shall be made at the time of hearing.

5. That appellant craves leave to add, amend or alter all or any grounds of appeal before or at the time of hearing.”

2.2 In ITA No. 1255/JPR/2024, the assessee has marched this appeal on the following grounds:-

“1. That order of Learned Assessing Authority is bad in law, illegal and against facts and circumstances of the case.

2. That learned Assessing Authority grossly erred in law and facts in making penalty of Rs. 203275/-U/s 271(1)(C).

3. That order of learned Assessing Authority is based on assumptions and presumptions and against real facts of the case.

4. That further submissions in support of appeal shall be made at the time of hearing.

5. That appellant craves leave to add, amend or alter all or any grounds of appeal before or at the time of hearing”

3.1 The brief facts of the case are that the assessee had sold an immovable property on 13.10.2011 for Rs. 6,00,000/- situated at Bari. However, the Stamp duty value of the property is valued at Rs. 9,86,770/- which was got registered

before the Sub- Registrar, Kanchanpur. It is noted that on the basis of information available with the AO, the case was reopened u/s 147 of the Act and after getting approval from the Competent Authority, the notice u/s 148 of the Act was issued to the assessee but no reply was received from the assessee. It is noticed that in spite of various notices alongwith show cause notices, the assessee failed to reply the same during assessment proceedings. The AO noticed that the assessee neither filed return of income nor furnished any satisfactory submission / explanation to the notices. Accordingly, the sale price of the property i.e. Rs.9,86,770/- is treated by the AO as income from undisclosed sources under the head Long Term Capital Gain for the year under consideration.

3.2 In first appeal, the Id.CIT(A) has confirmed the action of the AO by observing as under:-

“4.2. Ground No.2 pertains to the issue of addition on account of LTCG amounting to Rs.9,86,770/-. The appellant is an individual and did not file his return of income for the year under consideration. During the year, the appellant sold an immovable property for consideration of Rs.6,00,000/-. On further verification, it was found that the market value of the sold property is at Rs.9,86,770/-. In view of this fact, Long Term Capital Gain aroused in the case of the assessee. During the assessment proceedings, the AO issued a number of notices to the assessee which are stated as under:-

Sr. No.	Notice u/s	Date of Notice	Remarks
1.	148	27.03.2019	No compliance
2.	142(1)	27.08.2019	No compliance
3.	142(1)	04.10.2019	No compliance
4.	142(1)	11.10.2019	No compliance
5.	Show-cause notice	11.11.2019 (hearing date)	No compliance

4.3. As per the aforesaid show-cause notice, the assessee was requested to submit the detailed information in respect of the property sold such as sale deed, purchase deed of the property sold and was informed why LTCG should not be applied for the transaction carried out by the assessee. However, no reply was received nor adjournment was sought by the assessee. Further, it was seen that the assessee had sold the immovable property at the value of Rs. 6,00,000/-. However, the market value of the property determined by the Sub- Registrar, Kanchanpur worked out at Rs.9,86,770/- Therefore, the deemed sale consideration was considered at Rs.9,86,770/- u/s.50C of the Act during the course of assessment proceedings. Further, during the appellate proceedings a number of notices were being issued upon the assessee for substantiating his claim.

4.4. During the appellate proceedings, the appellant claimed that the land sold was agricultural land situated at distance of more than 15 Km from limits of municipality and hence it was not capital asset as per section 2(14) of the Act & capital gain arising out of sale of such land was exempt from tax. In support of his contention, the appellant filed the screenshot of the Map from which it can be identified that the impugned property is situated. at a distance of more than 15Kms from the Bari Municipal Area.

4.5. It is to be noted here that the appellant did not file any valid return of income in prescribed time limits for the year under consideration. In this case, the appellant failed to file return of income u/s 139 of the Act and also in response to the notice issued u/s 148 of the Act. The time for filing the return was also over and in fact there was no submission of original/revised return filed by the assessee during the course of assessment proceedings as well as during the appellate proceedings. As per the case law in the case of Goetze reported in 284 ITR 323(SC), it is mentioned that without mentioning of the claim of capital gain in the ITR filed by the assessee, the appellant cannot claim the Long Term Capital Gain for the year under consideration. Therefore, as per the case law mentioned above, the assessee is denied to claim any LTCG due to failure of filing/submission of ITR for the year under consideration.

4.6. The assessee failed to furnish the copy of return of income during the year under consideration as well as failed to furnish supporting document in relation to cost of acquisition & expenses for sale. Therefore, it is held that the addition made by the AO during the assessment proceedings by following provisions of section 50C of the Act was correct.

4.7. In view of the facts narrated above, it is noted that the appellant sold an immovable property and failed to offer to tax the capital gain arising out of this transaction and also failed to declare the same in the return of income which the assessee failed to furnish/file. Hence I reject the contention of the appellant and confirm the addition of Rs.9,86,770/- on account of capital gain u/s.45 of the I. T. Act, 1961. Accordingly, Ground No. 2 is dismissed

5 Ground No. 1, 3, 5 & 6 are general in nature and do not require any adjudication as the same were already dealt in detail in above paragraphs. Accordingly, Ground No. 1, 3, 5 & 6 are dismissed.

6. Ground No. 4 pertains to initiation of penalty proceedings u/s 271(1)©, of the Act. This ground is premature at this stage and hence do not require any adjudication. Accordingly, ground No. 4 is dismissed.

7. In the result, the appeal is dismissed.”

3.3 Being not satisfied with the order of the ld.CIT(A), the assessee carried the matter before this Bench and filed the following written submission to support his plea.

“That the Humble Appellant is an individual and residing at Remote Area of Dholpur. That the Notice under U/s 148 issued by learned AO on the information received from the DIT (I&CI) “the assessee had sold an immovable property on 3.10.2011 for Rs 6,00,000/- situated at Bari , whereas stamp duty value of the property is Rs 9,86,770/- which was got registered before sub registrar , Kanchanpur. Accordingly Notice U/s 148 of the Income tax Act, 1961 was issued on 27.3.2019 as mentioned in Assessment Order after getting prior approval of the Pr CIT, Alwar by speed post but not received by the Humble Appellant. That Ld Income Tax officer passed assessment order U/s 144 “Best judgement assessment” and make assessment by making addition stamp duty value Rs 9,86,770/- and demanded Rs 5,69,169/- and copy of assessment order not received by the Humble Appellant . That the Humble Appellant has come to know about the assessment when penalty notices 274 read with Section 271 (1) (c) dated 09/09/2021 issued by Ld Income tax officer Bharatpur. That the Humble Appellant after receipts of notices, requested to Ld. Income tax officer Bharatpur to issue certified copy of Assessment Order passed. Copy of acknowledgement of application submitted to Income Tax office Bharatpur dated 07/02/2022.

That Ld. Income tax officer Bharatpur provides the copy of assessment order on dated 07/02/2022.

That the Humble Appellant after receipts of assessment order, start to collect the information mentioned in assessment order.

That the Humble appellant has sold out an Agriculture Land Khasra No 889 Area 9 Bigha 9 Bishwa situated at Village Badraitha Tehsil Bari Distt Dholpur for Rs 6,00,000/- on dated 13.10.2011. The appellant has purchased the property on dated 23/07/2003 and cost of acquisition is as under:-

Cost of purchase Rs 75000/-

Stamp Duty Rs 8450/-

Registration Fees Rs 2578/-

Other Fees Rs 500/-

Total Cost of acquisition Rs 86528/-

And the Indexed Cost of Acquisition Comes to Rs.  $86528 * 184/109 = 1,46,066$  That the Ld. ITO, Bharatpur has not verified the basic facts of the case & with predetermined Mind additions were made stamp duty value of Rs. 9,86,770/- in the total income under head of capital gain. The Ld. ITO has not applied his mind to calculate capital gain prescribed U/s 45 of Income Tax Act 1961. That the Humble appellant has sold out Agriculture Land which is situated in Rural Area at Village Badraitha, Kanchanpur Tehsil Bari Distt Dholpur. The Land situated at Village Badraitha is 15 Km from Bari which is Tehsil and also is a Municipal Area and Land sold out is outside from Municipality about 15 KM.

**As per <https://villageinfo.in/rajasthan/dhaulpur/bari/badraitha.html> - arajasthan government Official Portal**

“According to Census 2011 information the location code or village code of Badraitha village is 075616. Badraitha village is located in Bari tehsil of Dhaulpur district in Rajasthan, India. It is situated 15km away from sub-district headquarter Bari (tehsildar office) and 26km away from district headquarter Dhaulpur. As per 2009 stats, Norha is the gram panchayat of Badraitha village.

The total geographical area of village is 311.53 hectares. Badraitha has a total population of 1,261 peoples, out of which male population is 661 while female population is 600. Literacy rate of badraitha village is 51.39% out of which 63.69% males and 37.83% females are literate. There are about 209 houses in badraitha village. Pincode of badraitha village locality is 328024.

Bari is nearest town to badraitha for all major economic activities, which is approximately 15km away.”

## Population of Badraitha

Particulars	Total	Male	Female
Total Population	1,261	661	600
Literate Population	648	421	227
Illiterate Population	613	240	373

**Connectivity of Badraitha**

Type	Status
Public Bus Service	Available within 10+ km distance
Private Bus Service	Available within 10+ km distance
Railway Station	Available within 10+ km distance

Thus, the Rural Agricultural Land has been specifically excluded from the definition of Capital Asset as defined in Section 2(14). As Rural Agricultural Land is not considered as a Capital Asset – therefore **Tax won't be levied on sale of Rural Agricultural Land** as it is only levied on sale of a Capital Asset.

That the Ld. ITO, Bharatpur has not verified the basic details of land sold, nor enquiry is made from Registry Authority / Gram Panchayat but total Sale Value is considered Capital Gain & Created Demand of Rs. 5,69,169/- is against Facts & Law and after Limitation Period.

That the humble appellant received assessment order on dated 07/02/2022 and request to your honour to kindly Condon the delay in filling of appeal due to non-receipts of assessment order in time and time taken in obtaining copy of Sale Deed from Purchaser & the Humble Appellant is senior Citizen aged 70 Years.

That the Learned Assessing Officer grossly erred in initiating the Penalty proceedings u/s 271(1)(c) of the Act.

That the Ld A O passed the Assessment Order U/s 147 r.w.s 144 without verification of facts & documents & with predetermined Mind made the additions & created the Demand of Rs. 5,69,169/-

### Grounds of Appeal

1. That order of Learned Assessing Authority is bad in law, illegal and against facts and circumstances of the case.
2.
  - i. That learned Assessing Authority grossly erred in law and facts in making additions of Rs. 9,86,770/- U/s 45 Long term capital Gain.
  - ii. That the Humble appellant has sold out an Agriculture Land Khasra No 889 Area 9 Bigha 9 Bishwa situated at Village Badraitha Tehsil Bari Distt Dholpur for Rs 6,00,000/- on dated 13.10.2011 which is outside the Preview of Capital Asset as defined U/s 2(14) of the Income Tax Act.
  - iii. That the Ld. ITO, Bharatpur has not verified the basic facts of the case & with predetermined Mind additions were made stamp duty value of Rs. 9,86,770/- in the total income under head of capital gain.
3. That order of learned Assessing Authority is based on assumptions and presumptions and against real facts of the case.
4. That learned Assessing Authority grossly erred in law and facts in making penalty of Rs. 203275/- U/s 271(1)(C).
5. That further submissions in support of appeal shall be made at the time of hearing.
6. That appellant craves leave to add, amend or alter all or any grounds of appeal before or at the time of hearing.

### GROUND OF APPEAL

1. That order of Learned Assessing Authority is bad in law, illegal and against facts and circumstances of the case.

That the Humble appellant has sold out an Agriculture Land Situated at Khasra No 889 Area 9 Bigha 9 Bishwa situated at Village Badraitha Tehsil Bari Distt Dholpur for Rs 6,00,000/- on dated 13.10.2011 (Refer Sale Deed 1-16 of Paper Book). The appellant has purchased the property on dated 23/07/2003 (Refer Purchase Deed 17-23) of Paper Book and cost of acquisition is as under:-

Cost of purchase Rs 75000/-

Stamp Duty Rs 8450/-

Registration Fees Rs 2578/-

Other Fees Rs 500/-

Total Cost of acquisition Rs 86528/-

And the Indexed Cost of Acquisition Comes to Rs.  $86528 * 184/109 = 1,46,066$

That the Ld. ITO, Bharatpur has not verified the basic facts of the case & with predetermined Mind additions were made stamp duty value of Rs. 9,86,770/- in the total income under head of capital gain. The Ld. ITO has not applied his mind to calculate capital gain prescribed U/s 45 of Income Tax Act 1961. That the Humble appellant has sold out Agriculture Land which is situated in Rural Area at Village Badraitha , Kanchanpur Tehsil Bari Distt Dholpur. The Land situated at Village Badraitha is 15 Km from Bari which is Tehsil and also is a Municipal Area .and Land sold out is outside from Municipality about 15 KM .

That As per <https://villageinfo.in/rajasthan/dhaulpur/bari/badraitha.html> - arajasthan government Official Portal

“According to Census 2011 information the location code or village code of Badraitha village is 075616. Badraitha village is located in Bari tehsil of Dhaulpur district in Rajasthan, India. It is situated 15km away from sub-district headquarter Bari (tehsildar office) and 26km away from district headquarter Dhaulpur. As per 2009 stats, Norha is the gram panchayat of Badraitha village.

The total geographical area of village is 311.53 hectares. Badraitha has a total population of 1,261 peoples, out of which male population is 661 while female population is 600. Literacy rate of badraitha village is 51.39% out of which 63.69% males and 37.83% females are literate. There are about 209 houses in badraitha village. Pincode of badraitha village locality is 328024.

Bari is nearest town to badraitha for all major economic activities, which is approximately 15km away.”

**Population of Badraitha village**

<b>Particulars</b>	<b>Total</b>	<b>Male</b>	<b>Female</b>
Total Population	1,261	661	600
Literate Population	648	421	227
Illiterate Population	613	240	373

**Connectivity of Badraitha village**

<b>Type</b>	<b>Status</b>
1. Public Bus Service	Available within 10+ km distance
2. Private Bus Service	Available within 10+ km distance
3. Railway Station	Available within 10+ km distance

**That as per Notification No. [SO 9447] (File No. 164/3/87-ITA.I)], dated. 6-1-1994 regarding** “Now, therefore, in exercise of the powers conferred by item (B) of clause (ii) of the proviso to sub-clause (c) of clause (1A) and item (b) of sub-clause (iii) of clause (14) of section 2 of the Income-tax Act, 1961 (43 of 1961), and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue and Insurance) No. S.O. 77(E), dated February 6, 1973, the Central Government having regard to the extent of, and scope for urbanisation of the areas concerned and other relevant considerations, hereby specifies the areas shown in column (4) of the schedule hereto annexed and falling outside the local limits of municipality or cantonment board, as the case may be, shown in the corresponding entry in column (3) thereof and against the State or Union Territory shown in column (2) thereof for the purposes of the above mentioned provision of the Income-tax Act, 1961 (43 of 1961)”.

**SCHEDULE**

<b>Sl</b>	<b>Name of the Sate or</b>	<b>Name of the municipality or Cantonment Board</b>	<b>Details of areas falling outside the local</b>

No.	Union Territory	falling in the State/Union Territory mentioned under column (3)	
19.	Rajasthan	4. Bharatpur	Areas up to a distance of 8 kms. from the municipal limits in all directions.

That Dholpur District is a district of Rajasthan state in Northern India. The town of Dholpur is the district headquarters. Dholpur District is a part of Bharatpur Divisional Commissionerate.

In support of our contention we are supporting herewith following judicial Pronouncement:-

- a. That THE HON'BLE ITAT DELHI BENCH 'A' in case of Ashish Gupta v. Income-tax Officer\* [2024] 163 taxmann.com 739 (Delhi - Trib.) held that "Section [2\(14\)](#), read with section [45](#), of the Income-tax Act, 1961 - Capital gains - Capital asset (Agricultural land) - Assessment year 2013-14 - Assessee sold agricultural land situated beyond municipal limits - Assessing Officer treated sale proceeds as long-term capital gain on the grounds that land was within 5 km of municipal limits at time of sale - Commissioner (Appeals) upheld addition - Whether for determining agricultural land is capital asset, distance from municipal limits should be reckoned as per notification dated 6.1.1994 issued under section 2(14)(iii)(b) and subsequent expansion of municipal limits without fresh notification by Central Government was irrelevant - Held, yes - Whether since agricultural land sold by assessee was situated beyond 8 km from municipal limits as per 1994 notification, same was not capital asset and capital gains arising from its sale were not chargeable to tax under section 45 - Held, yes [Paras 8, 9] [In favour of assessee]"
- b. That THE HON'BLE HIGH COURT OF BOMBAY in case of Ashok Chaganlal Thakkar v. National Faceless Assessment Centre\* [2024] 159 taxmann.com 559 (Bombay) held that "Section [2\(14\)](#), read with sections [50C](#) and [254](#), of the Income-tax Act, 1961 - Capital gains - Capital assets (Agricultural land) - Assessment year 2013-14 - Assessee sold certain parcels of land and claimed that said land was agricultural land and, thus, capital gain arising from sale of said land was not chargeable to tax - Assessing Officer held that land was capital asset on ground that land was held for less than two years and no evidence had been brought on record to demonstrate that agricultural activity was carried out on land during year under consideration - He, thus, denied claim of assessee - Tribunal observed that assessee had submitted

documentary evidences from village level officers before Commissioner (Appeals) which demonstrated that lands sold were in nature of agricultural land - He, thus, remanded matter to Assessing Officer for de novo consideration - However, Assessing Officer again passed assessment order holding that assessee showed no evidence of carrying on agricultural operation - Whether since matter was restored to Assessing Officer only to examine evidence filed by assessee and conduct enquiry, if necessary, with concerned authorities of Government to find out true nature and character of land sold - Held, yes - Whether thus, if Assessing Officer based on material brought on record concluded that lands sold by assessee were not in nature of agricultural land, then only he could conclude that land would come within purview of 'capital asset' as defined under section 2(14) - Held, yes - Whether thus, impugned assessment order was to be quashed and matter was to be remanded for fresh assessment order - Held, yes [Paras 8 and 9] [Matter remanded]”

- c. That the Hon’ble SUPREME COURT OF INDIA incase of Commissioner of Income-tax v. M. R. Prabhavathy\* [2023] 154 taxmann.com 143 (SC) held that “Section [2\(14\)](#) of the Income-tax Act, 1961 - Capital gains - Capital assets (Agricultural land) - Assessment year 2008-09 - Assessee got his agricultural lands converted for non-agricultural purpose and sold said land, however, he did not offer any capital gain to tax claiming that land was agricultural land - Revenue submitted that assessee's lands were within 8 kms. from Devanahalli Municipality and within 8 kms. from Bengaluru Municipality (BBMP) when measured aerially, therefore, they fell within definition of capital assets under section 2(14)(iii) - Tribunal noted that, though land was converted, assessee continued agricultural operations which was evident from fact that income derived from agricultural operations declared by assessee was accepted by revenue - Further, even as per notification issued by Central Government, lands did not fall within 8 kms. from BBMP - High Court by impugned order held that finding of Tribunal that lands sold by assessee were agricultural land as defined under section 2(14)(iii) being based on evidence on record, did not call for any interference - Whether SLP filed against impugned order was to be dismissed - Held, yes [Para 3] [In favour of assessee] Section [2\(14\)](#) of the Income-tax Act, 1961 - Capital gains - Capital assets (Agricultural land) - Assessment year 2008-09 - High Court by impugned order held that inclusion of lands in Special Zone cannot be a determining factor, hence, mere inclusion of land without any infrastructure development does not convert land into non-agricultural land - Whether SLP filed against impugned order was to be dismissed - Held, yes [Para 3] [In favour of assessee]”
- d. That the Hon’ble ITAT AHMEDABAD BENCH 'D' incase of HitenTulshibhai Engineer v. Income-tax Officer\* [2023] 157 taxmann.com 81 (Ahmedabad - Trib.) held that

“Section [2\(14\)](#) of the Income-tax Act, 1961 read with section 63AA of Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 1997 (GT & ALL) and section 65B of the Bombay Land Revenue Code, 1879 - Capital gains - Capital assets (Agricultural land) - Assessment year 2016-17 - During year, assessee sold agricultural land to company SSWL - Assessee contended that land sold by him did not qualify as "capital asset" in terms of section 2(14)(iii) being "rural agricultural land", and therefore, capital gain earned thereon was not returned to tax - Assessing Officer noted that land was purchased by SSWL for "industrial purposes" under section 63AA of GT&ALL - Therefore, he deemed said land as "non-agricultural land", and accordingly, concluded that it qualified as "capital asset" and capital gain earned thereon was liable to tax - It was noted that though purchaser received permission to buy lands for bona fide industrial purposes under section 63AA of GT & All from State Industrial Commissioner, however, certificate for change of land use from agriculture to non-agriculture was issued by Collector after purchase of land by SSWL - Further, conveyance deed all along mentioned impugned land as agricultural land - Whether use of land for non-agriculture purpose was completed only when its non-agriculture usage had commenced and notified to Collector, which in instant case was done by SSWL subsequent to its purchase from assessee - Held, yes - Whether, further, since there was no dispute vis-a-vis distance of land from municipal limits, impugned land did not qualify as a 'capital asset' and capital gains so earned upon its sale by assessee could not be taxed - Held, yes [Paras 19 and 20] [In favour of assessee]”

- e. That the Hon'ble ITAT CHENNAI BENCH 'B' incase of PanditVettrivelv. ACIT\* [2023] 155 taxmann.com 662 (Chennai - Trib.) held that “Section [2\(14\)](#), read with section [45](#), of the Income-tax Act, 1961 - Capital gains - Capital asset (Agricultural land) - Assessment year 2007-08 - Assessee sold its agricultural land and claimed exemption from capital gain tax - Assessing Officer opined that land was not an agricultural land and no agricultural operations were carried out by assessee on aforesaid land - It was observed that assessee had furnished Adangal Extract Receipts issued by Tahsildar, Electricity Board Receipts, Land Test Report, Land Revenue Tax Receipt, Agricultural Income Receipts and Ploughing Expense Receipts - Further, in Patta, land had been classified as 'Punjal' wet land - Whether, in view of facts, since assessee had fairly established that land was agricultural land and had duly discharged onus as casted upon him, Assessing Officer was to be directed to delete impugned addition - Held, yes [Paras 8, 9 and 13] [In favour of assessee]”

Thus, the Rural Agricultural Land has been specifically excluded from the definition of Capital Asset as defined in Section 2(14). As Rural Agricultural Land is not considered as a Capital Asset – therefore Tax won't be levied on sale of Rural Agricultural Land as it is only levied on sale of a Capital Asset.

That we are submitting herewith copy of Sale Deed alongwithgirdawari\_khasra, Purchase Deed & Google Map for your kind perusal.

We therefore request your honour to kindly accept the ground of Appeal & quash the Demand of Rs. 5,69,169/- & Oblige.

2. i. That learned Assessing Authority grossly erred in law and facts in making additions of Rs. 9,86,770/- U/s 45 Long term capital Gain.
- ii. That the Humble appellant has sold out an Agriculture Land Khasra No 889 Area 9 Bigha 9 Bishwa situated at Village Badraitha Tehsil Bari Distt Dholpur for Rs 6,00,000/- on dated 13.10.2011
- iii. That the Ld. ITO, Bharatpur has not verified the basic facts of the case & with predetermined Mind additions were made stamp duty value of Rs. 9,86,770/- in the total income under head of capital gain.

That the Humble appellant has sold out an Agriculture Land Situated at Khasra No 889 Area 9 Bigha 9 Bishwa situated at Village Badraitha Tehsil Bari Distt Dholpur for Rs 6,00,000/- on dated 13.10.2011. The appellant has purchased the property on dated 23/07/2003 and cost of acquisition is as under:-

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Type	Status
1. Public Bus Service	Available within 10+ km distance
2. Private Bus Service	Available within 10+ km distance
3. Railway Station	Available within 10+ km distance

**That as per Notification No. [SO 9447] (File No. 164/3/87-ITA.I)], dated. 6-1-1994 regarding** “Now, therefore, in exercise of the powers conferred by item (B) of clause (ii) of the proviso to sub-clause (c) of clause (1A) and item (b) of sub-clause (iii) of clause (14) of section 2 of the Income-tax Act, 1961 (43 of 1961), and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue and Insurance) No. S.O. 77(E), dated February 6, 1973, the Central Government having regard to the extent of, and scope for urbanisation of the areas concerned and other relevant considerations, hereby specifies the areas shown in column (4) of the schedule hereto annexed and falling outside the local limits of municipality or cantonment board, as the case may be, shown in the corresponding entry in column (3) thereof and against the State or Union Territory shown in column (2) thereof for the purposes of the above mentioned provision of the Income-tax Act, 1961 (43 of 1961)”.

## SCHEDULE

Sl No.	Name of the State or Union Territory	Name of the municipality or Cantonment Board falling in the State/Union Territory mentioned under column (3)	Details of areas falling outside the local
19.	Rajasthan	4. Bharatpur	Areas up to a distance of 8 kms. from the municipal limits in all directions.

That Dholpur District is a district of Rajasthan state in Northern India. The town of Dholpur is the district headquarters. Dholpur District is a part of Bharatpur Divisional Commissionerate.

In support of our contention we are supporting herewith following judicial Pronouncement:-

- a. That THE HON'BLE ITAT DELHI BENCH 'A' in case of Ashish Gupta v. Income-tax Officer\* [2024] 163 taxmann.com 739 (Delhi - Trib.) held that “Section 2(14), read with section 45, of the Income-tax Act, 1961 - Capital gains - Capital asset (Agricultural land) - Assessment year 2013-14 - Assessee sold agricultural land situated beyond municipal limits - Assessing Officer treated sale proceeds as long-term capital gain on the grounds that land was within 5 km of municipal limits at time of sale - Commissioner (Appeals) upheld addition - Whether for determining agricultural land is capital asset, distance from municipal limits should be reckoned as per notification dated 6.1.1994 issued under section 2(14)(iii)(b) and subsequent expansion of municipal limits without fresh notification by Central Government was irrelevant - Held, yes - Whether since agricultural land sold by assessee was situated beyond 8 km from municipal limits as per 1994 notification, same was not capital asset and capital gains arising from its sale

were not chargeable to tax under section 45 - Held, yes [Paras 8, 9] [In favour of assessee]”

- b. That THE HON'BLE HIGH COURT OF BOMBAY incase of Ashok ChaganlalThakkarv. National Faceless Assessment Centre\* [2024] 159 taxmann.com 559 (Bombay) held that “Section [2\(14\)](#), read with sections [50C](#) and [254](#), of the Income-tax Act, 1961 - Capital gains - Capital assets (Agricultural land) - Assessment year 2013-14 - Assessee sold certain parcels of land and claimed that said land was agricultural land and, thus, capital gain arising from sale of said land was not chargeable to tax - Assessing Officer held that land was capital asset on ground that land was held for less than two years and no evidence had been brought on record to demonstrate that agricultural activity was carried out on land during year under consideration - He, thus, denied claim of assessee - Tribunal observed that assessee had submitted documentary evidences from village level officers before Commissioner (Appeals) which demonstrated that lands sold were in nature of agricultural land - He, thus, remanded matter to Assessing Officer for de novo consideration - However, Assessing Officer again passed assessment order holding that assessee showed no evidence of carrying on agricultural operation - Whether since matter was restored to Assessing Officer only to examine evidence filed by assessee and conduct enquiry, if necessary, with concerned authorities of Government to find out true nature and character of land sold - Held, yes - Whether thus, if Assessing Officer based on material brought on record concluded that lands sold by assessee were not in nature of agricultural land, then only he could conclude that land would come within purview of 'capital asset' as defined under section 2(14) - Held, yes - Whether thus, impugned assessment order was to be quashed and matter was to be remanded for fresh assessment order - Held, yes [Paras 8 and 9] [Matter remanded]”
- c. That the Hon'ble SUPREME COURT OF INDIA incase of Commissioner of Income-tax v. M. R. Prabhavathy\* [2023] 154 taxmann.com 143 (SC) held that “Section [2\(14\)](#) of the Income-tax Act, 1961 - Capital gains - Capital assets (Agricultural land) - Assessment year 2008-09 - Assessee got his agricultural lands converted for non-agricultural purpose and sold said land, however, he did not offer any capital gain to tax claiming that land was agricultural land - Revenue submitted that assessee's lands were within 8 kms. fromDevanahalli Municipality and within 8 kms. from Bengaluru Municipality (BBMP) when measured aerially, therefore, they fell within definition of capital assets under section 2(14)(iii) - Tribunal noted that, though land was converted, assessee continued agricultural operations which was evident from fact that income derived from agricultural operations declared by assessee was accepted by revenue - Further, even as per notification issued by Central Government, lands did not fall within 8 kms.

from BBMP - High Court by impugned order held that finding of Tribunal that lands sold by assessee were agricultural land as defined under section 2(14)(iii) being based on evidence on record, did not call for any interference - Whether SLP filed against impugned order was to be dismissed - Held, yes [Para 3] [In favour of assessee] Section [2\(14\)](#) of the Income-tax Act, 1961 - Capital gains - Capital assets (Agricultural land) - Assessment year 2008-09 - High Court by impugned order held that inclusion of lands in Special Zone cannot be a determining factor, hence, mere inclusion of land without any infrastructure development does not convert land into non-agricultural land - Whether SLP filed against impugned order was to be dismissed - Held, yes [Para 3] [In favour of assessee]”

- d. That the Hon’ble ITAT AHMEDABAD BENCH 'D' incase of HitenTulshibhai Engineer v. Income-tax Officer\* [2023] 157 taxmann.com 81 (Ahmedabad - Trib.) held that “Section [2\(14\)](#) of the Income-tax Act, 1961 read with section 63AA of Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 1997 (GT & ALL) and section 65B of the Bombay Land Revenue Code, 1879 - Capital gains - Capital assets (Agricultural land) - Assessment year 2016-17 - During year, assessee sold agricultural land to company SSWL - Assessee contended that land sold by him did not qualify as "capital asset" in terms of section 2(14)(iii) being "rural agricultural land", and therefore, capital gain earned thereon was not returned to tax - Assessing Officer noted that land was purchased by SSWL for "industrial purposes" under section 63AA of GT&ALL - Therefore, he deemed said land as "non-agricultural land", and accordingly, concluded that it qualified as "capital asset" and capital gain earned thereon was liable to tax - It was noted that though purchaser received permission to buy lands for bona fide industrial purposes under section 63AA of GT & All from State Industrial Commissioner, however, certificate for change of land use from agriculture to non-agriculture was issued by Collector after purchase of land by SSWL - Further, conveyance deed all along mentioned impugned land as agricultural land - Whether use of land for non-agriculture purpose was completed only when its non-agriculture usage had commenced and notified to Collector, which in instant case was done by SSWL subsequent to its purchase from assessee - Held, yes - Whether, further, since there was no dispute vis-a-vis distance of land from municipal limits, impugned land did not qualify as a 'capital asset' and capital gains so earned upon its sale by assessee could not be taxed - Held, yes [Paras 19 and 20] [In favour of assessee]”
- e. That the Hon’ble ITAT CHENNAI BENCH 'B' incase of PanditVettrivelv. ACIT\* [2023] 155 taxmann.com 662 (Chennai - Trib.) held that “Section [2\(14\)](#), read with section [45](#), of the Income-tax Act, 1961 - Capital gains - Capital asset (Agricultural land) - Assessment year 2007-08 - Assessee sold its agricultural land and claimed exemption from capital gain tax - Assessing Officer opined that land was not an agricultural

land and no agricultural operations were carried out by assessee on aforesaid land - It was observed that assessee had furnished Adangal Extract Receipts issued by Tahsildar, Electricity Board Receipts, Land Test Report, Land Revenue Tax Receipt, Agricultural Income Receipts and Ploughing Expense Receipts - Further, in Patta, land had been classified as 'Punjal' wet land - Whether, in view of facts, since assessee had fairly established that land was agricultural land and had duly discharged onus as casted upon him, Assessing Officer was to be directed to delete impugned addition - Held, yes [Paras 8, 9 and 13] [In favour of assessee]”

- f. That the Hon’ble ITAT JAIPUR BENCH 'SMC' incase of DiptiGargv. Income-tax Officer\* [2024] 162 taxmann.com 347 (Jaipur - Trib.) held that “Section [2\(14\)](#), read with section [56](#), of the Income-tax Act, 1961 - Capital gains - Capital assets (Agricultural land) - Assessment year 2014-15 - Assessee sold an agricultural land for a certain amount and sub-registrar valued said land at a higher amount - Assessing Officer invoked provisions of section 56(2)(vii)(b) and added difference between consideration as per stamp value authority and sale consideration disclosed by assessee to income of assessee - It was found that asset in question was an agricultural land not falling in category of capital asset defined in clause (d) to Explanation to section 56(2)(vii)(b) - Whether therefore, section 56(2)(vii)(b) could not have been invoked and therefore, addition made under section 56(2)(vii)(b) was to be deleted by setting aside finding of lower authorities - Held, yes [Para 11] [In favour of assessee]”
- g. That the Hon’ble ITAT KOLKATA BENCH 'B' incase of AchhelalYadavv. Income-tax Officer\* [2024] 158 taxmann.com 507 (Kolkata - Trib.)held that “Section [2\(14\)](#), read with section [54B](#), of the Income-tax Act, 1961 - Capital gains - Capital asset (Agricultural land) - Assessment year 2013-14 - Assessee sold agricultural land during year and utilized total sale consideration for purchasing new agricultural land during year - Whether since on going through Notification No. S O 9447 (File No. 164/3/97 - ITA. I), dated 6-1-1994 and details of sale deeds as well as certificate issued by Gram Panchayat it was found that agricultural land sold during year did not fall within definition of capital asset as provided under section 2(14)(iii), capital gain arising from sale thereof was exempt from tax - Held, yes - Whether even if agricultural land was considered as capital asset, even then assessee was entitled for exemption under section 54B for total purchase price of new agricultural land or long-term capital gain arising from sale of agricultural land, whichever was lower - Held, yes [Para 8] [In favour of assessee]”.
- 2.i. Therefore the learned Assessing Authority grossly erred in law and facts in making additions of Rs. 9,86,770/- U/s 45 Long term capital Gain infact the provisions of Section 50C or section 56(2)(vii)(b) are not applicable in the present case but the Learned AO

added difference between consideration as per stamp value authority and sale consideration disclosed by Humble Appellant to income of Humble Appellant.

- ii. That the Humble appellant has sold out an Agriculture Land Khasra No 889 Area 9 Bigha 9 Bishwa situated at Village Badraitha Tehsil Bari Distt Dholpur for Rs 6,00,000/- on dated 13.10.2011 Thus, the Rural Agricultural Land has been specifically excluded from the definition of Capital Asset as defined in Section 2(14). As Rural Agricultural Land is not considered as a Capital Asset – therefore Tax won't be levied on sale of Rural Agricultural Land as it is only levied on sale of a Capital Asset.
- iii. That the Ld. ITO, Bharatpur has not verified the basic facts of the case & with predetermined Mind additions were made stamp duty value of Rs. 9,86,770/- in the total income under head of capital gain since the Humble appellant has sold out Agriculture Land which is situated in Rural Area at Village Badraitha, Kanchanpur Tehsil Bari Distt Dholpur. The Land situated at Village Badraitha is 15 Km away from Bari which is Tehsil and also is a Municipal Area and Land sold out is outside from Municipality about 15 KM. thus Asset Sold is not an Capital Asset as defined u/s 2(14) of the Income Tax Act.

We therefore request your honour to kindly accept the ground of Appeal [2 (a, b & c)] & quash the Demand of Rs. 5,69,169/- & Oblige.

3. That order of learned Assessing Authority is based on assumptions and presumptions and against real facts of the case.

That the humble Appellant have sold an Agriculture Land which is situated in Rural Area at Village Badraitha, Kanchanpur Tehsil Bari Distt Dholpur. The Agricultural Land is situated at Village Badraitha is 15 Km from Bari which is Tehsil and also is a Municipal Area and Land sold out is outside from Municipality about 15 KM, thus not an Capital Asset as defined U/s 2(14) of the Income Tax Act.

We therefore request your honour to kindly accept the ground of Appeal & quash the Demand of Rs. 5,69,169/- & Oblige.

4. That the learned Assessing Authority, grossly erred in law and facts in initiating proceedings under section 271(1)(c) of the act. – Penalty Appeal.  
That the Penalty is connected with Quantum & related to Ground of Appeal No 1 to 3, since the Humble Appellant sold Agricultural Land which is situated in Rural Area at

Village Badraitha , Kanchanpur Tehsil Bari Distt Dholpur . The Land situated at Village Badraitha is 15 Km from Bari which is Tehsil and also is a Municipal Area and Land sold out is outside from Municipality about 15 KM& having less than 2000 Population as per census 2011. Thus, the Land is not an Capital Assets As Rural Agricultural Land is not considered as a Capital Asset – therefore Tax won't be levied on sale of Rural Agricultural Land, thus no Question of Penalty arises.

We therefore request your honour to kindly accept the Appeal & quash the Demand raised by Assessment Order Dt 14/11/2019 (U/s 144 rws 147) &Dt 10/02/2022 (Penalty U/s 271(1)(C) & Oblige.

3.4 Besides the written submission, the assessee has filed an application dated 9-12-2024 to admit the additional evidence in support of his case whose details are as under:-

1. Certificate from Tehsildar
2. Population Details of Badraitha

The Bench has no objection to admit /consider the same as the same documents has already been filed by the assessee in the Index having paper book 1 to 57 to support his grounds of appeal whose details are as under:-

S. No.	Particulars	Page No.
1.	Certificate from Tehsildhar	1
2.	Population detail of Badraitha	2
3.	Google Map of Badraitha	3
4.	Copy of Jamabandi	4-7
5.	Copy of sale deed	8-30
6.	Copy of purchase deed	31-38
7.	Copy of reply submitted before CIT(A) on dt. 13.08.2024 along with copy of application u/s 46A	39-57

3.5 On the other hand, the ld. DR supported the orders of the lower authorities.

3.6 We have heard both the parties and perused the materials available on record. In this case it is noted that the assessee was ex-parte before the lower authorities and did not submit any documents / evidence to support his grievance. The assessee was provided various opportunities by the Id. CIT(A) to submit the reply but it was in vain and thus he has no option except to confirm the action of the AO by observing as under:-

‘4.6. The assessee failed to furnish the copy of return of income during the year under consideration as well as failed to furnish supporting document in relation to cost of acquisition & expenses for sale. Therefore, it is held that the addition made by the AO during the assessment proceedings by following provisions of section 50C of the Act was correct.

4.7. In view of the facts narrated above, it is noted that the appellant sold an immovable property and failed to offer to tax the capital gain arising out of this transaction and also failed to declare the same in the return of income which the assessee failed to furnish/file. Hence I reject the contention of the appellant and confirm the addition of Rs.9,86,770/- on account of capital gain u/s.45 of the I. T. Act, 1961. According, Ground No. 2 is dismissed.’

Taking into consideration all the facts and circumstances of the case, the Bench feels that one more chance should be given to the assessee to adduce the documents / evidences in support of his grounds of appeal / grievance. Since it is an admitted fact that the assessee is ex-parte before the AO and also before the Id. CIT(A), therefore, he could not put forth his defence. It was the bounded duty of the assessee to appear before the statutory authorities as and when called for. It is noticed that various opportunities were provided to the assessee for settling the

issue but the assessee remained lethargic and unserious in pursuing his case. However, we are of the view that lis between the parties has to be decided on merits so that nobody's rights could be scuttled down without providing opportunity of being heard to the assessee. Hence, the matter is restored to the file of the AO to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings. Thus the appeal of the assessee is allowed for statistical purposes.

3.7 Before parting, we may make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by AO independently in accordance with law.

4.1 As regards the penalty appeal of the assessee relating to Section 271(1) © of the Act, the Bench feels that since the quantum appeal of the assessee has been restored to the file of the AO for afresh adjudication, therefore the fate of penalty appeal will be in accordance with decision of quantum appeal. Hence, the same is restored to the file of AO to act in accordance with law.

5.0 In the result, the both the appeals of the assessee are allowed for statistical purposes as indicated hereinabove

Order pronounced in the open court on 17 / 01/2025.

Sd/-  
( गगन गोयल )  
(GAGAM GOYAL)  
लेखा सदस्य / Accountant Member

Sd/-  
(डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 17 /01/2025

\*Santosh \*

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sh. Om Parkash, Dholpur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-4, Bharatpur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 1254 & 1255/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar