

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.506/SRT/2024**

**Assessment Year: (2012-13)**

**(Physical Hearing)**

Kanchanben Maheshbhai Patel, 170, Tarsada Bar, AL Mandvi, Surat – 394160	<b>Vs.</b>	The ITO, Ward – 2, Bardoli
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: BKIPP5896G</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri P. M. Jagasheth, CA
<b>Respondent by</b>	Shri Mukesh Jain, Sr. DR
<b>Date of Hearing</b>	06/01/2025
<b>Date of Pronouncement</b>	11/02/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 01.03.2024 by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2012-13.

2. The grounds of appeal raised by the assessee are as under:

*"1. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.21,64,895/- on account of alleged long term capital gain on the sale of agriculture land not being capital asset within meaning of section 2(14)(iii)(III).*

*2. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.57,58,180/- on account of alleged invoking the provisions of section 50C of the Act.*

3. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.12,89,500/- on account of alleged rejecting the contention of the assessee that the cash deposited in her bank account was made out of cash balance accumulated from her agriculture income.*

4. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in holding that the Talati-Cum-Mantri of Village is not competent authority to issue the distance certificate from the municipal limits of the nearest city i.e. Surat to Village Kosmadi and computing capital gain at Rs.21,64,695/-.*

5. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in invoking the provision of section 50C to compute the capital gain on sale of agriculture land which is not capital asset within the meaning of section 2(14)(iii).*

6. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in rejecting the contention of the appellant that the cash deposit in her bank accounts were made out of agriculture income without appreciating the document supporting the sale of agriculture produce from the agriculture land of appellant held by her since the year 1985.*

7. *On the facts and in the circumstances of the case as well as the law on the subject, the Ld. Assessing Officer has erred in initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961.*

8. *It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.*

9. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal."*

3. Brief facts of the case are that the assessee did not file return of income for AY.2012-13. As per information received from ITO, Ward-3(3)(3), Surat, the assessee sold a plot of land along with four co-owners during the subject assessment year. The land situated at Moje: Gam Kosmadi, Tal: Kamrej, Block No.210 was sold vide sale deed registration No. KMJ/60/2012, registered with Sub-

Registrar, Kamraj. As per registered sale deed, value of this property was at Rs.1,18,70,000/-. But, the Stamp Valuation Authority (SVA) had adopted fair market value (FMV) at Rs.4,06,63,235/-. In view of these facts, the case of the assessee was re-opened u/s 147 of the Act and notice u/s 148 was issued by Assessing Officer (in short, 'AO') on 30.03.2019. In response, the assessee filed his return of income for AY.2012-13 on 06.05.2019, declaring total income of Rs.1,62,947/- and agricultural income of Rs.90,000/-. The objection of the assessee to the re-opening was disposed of by a speaking order on 16.10.2019. Thereafter, AO issued notices u/s 143(2) and 142(1) of the Act, which were mostly not complied. Hence, the AO issued a show cause notice informing the assessee that the distance of 19.4 kilometres of the land from the local limits of the city of Surat is not correct. The certificate issued by the Talati-cum-Mantri is not acceptable because he is not the competent authority to decide the distance of any specific land. On the other hand, the Executive Engineer, Road and Building is the competent authority. The AO also asked assessee to explain all credit entries appearing in the bank account. He asked as to why the entire credit entries including cash should not be added u/s 68 of the Act. The AO further asked why capital gain on sale of immovable property should not be treated as undisclosed income and why difference of Rs.57,58,180/- between the value of SVA and registered value [Rs.81,32,180 – Rs.23,74,000] should not be added u/s 50C of the Act. The assessee requested to allow 10 days' time, but nothing was submitted after the said period. Thereafter, the AO measured the distance of the land sold

from the google map and noticed that the land was situated within 8 kilometres from the municipal limits of Surat city. Hence, it was a capital asset u/s 2(14) of the Act and the gain from transfer of such land was chargeable to tax under the head capital gains. He adopted rate of Rs.4/- per square metres as on 01.04.1981 and computed long-term capital gain (LTCG) at Rs.21,64,895/-. The AO also added Rs.57,58,180/- u/s 50C of the Act being the difference between fair market value (FMV) for levying stamp duty and the actual sale consideration. In absence of details, the AO also added Rs.12,89,500/- being the cash deposit in the bank account during the year u/s 68 of the Act. In the result, total income was determined at Rs.93,75,520/- against returned income of Rs.1,62,947/-.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). Upon receiving the notices u/s 250 of the Act, the appellant submitted additional evidences, which were sent to AO for remand report. The AO submitted the remand report, which was sent to the appellant for comments. The appellant submitted rejoinder on 01.01.2024. The CIT(A) has considered the observation of the AO, appellant's submission and given the decisions at paras 4, 5 and 6 of the appellate order. Regarding the issue of long-term capital gain (LTCG) of Rs.21,64,895/-, assessee had submitted a certificate from the Executive Engineer of the Road and Building Department of Surat wherein the distance was stated to be 8.5 kilometres. The distance measured by the Deputy Executive Engineer consisted of three parts i.e., (i) Nana Varachha Road to Kathodara: 5.7 kilometres, (ii) Kathodara to NH-8: 1.5 kilometres and (iii) NH-8 to Sevani: 1.3 kilometres,

indicating total distance of 8.5 kilometres. The CIT(A) observed that the distance measured by the Deputy EE is road distance, which is not in straight line and was not the arial distance of the subject land from municipal limits. The CIT(A) perused from the website of Surat Municipality i.e., i.e., <http://www.suratmunicipal.gov.in> and observed that ward 'Kathodara' is the nearest municipal limit for the subject land. The arial distance from the said municipal limits was 6.9 kilometres as per the google map. Since the impugned land was well within 8 kilometres, it was a capital asset u/s 2(14) of the Act. Hence, the gain from sale of the asset would attract capital gains. He confirmed the addition made by AO.

4.1 As the land was capital asset, the provisions of section 50C are attracted. Therefore, the difference between the market price fixed by the SRO and the actual consideration shown to have been paid in the sale deed was rightly taxed by the AO u/s 50C of the Act.

4.2 Regarding the cash deposit, the appellant had shown opening cash balance of Rs.12,01,000/- as on 01.04.2011. The CIT(A) stated that AO has observed that the appellant filed the return of income for the first time showing agricultural income of Rs.90,000/-. The appellant had withdrawn cash from the bank at regular intervals and had not furnished any explanation as to why the cash was withdrawn and accumulated despite of cash in hand. The appellant relied on the decision of ITAT, Surat in ITA No.116/SRT/2021 (Jitesh Vithalbhaia Rashiya vs. ITO), whose facts were different from the assessee's case because in the said case the assessee had filed complete details and also cash flow statement for earlier years

substantiating availability of the opening cash in hand. Since, the facts were not similar, the CIT(A) concluded that the cash book produced with the opening balance of Rs.12,01,000/- is only an after-thought to justify the cash deposits in the bank accounts. Hence, the CIT(A) dismissed all the grounds raised by the appellant.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorised Representative (Id. AR) of the assessee submitted a paper book, which includes distance certificate from the Dy. EE, Surat (R & B), Sub-Division No.4, Surat (English Translation) and Circular No.17 of 2015 (F. No.279/MISC./140/2015-ITJ), dated 06.10.2015 (supra). The Id. AR also relied on the following decisions: (i) CIT vs. Nitish Rameshchandra Chordia, (2015) 57 Taxmann.com 394 (Bombay HC), (ii) CIT vs. Vijay Singh Kadam, ITA No.714/2015 (Delhi HC), (iii) DCIT vs. Manubhai Rajabhai Dhameliya, ITA No.258 & 259/SRT/2018 (ITAT – Surat) and Printisha Pravinbhai Patel & Ors. vs. ITO, ITA Nos.477 to 486/SRT/2019 (ITAT – Surat) and submitted that the impugned land was not a capital asset u/s 2(14) of the Act. It is clear from the certificate issued by the Dy. EE, Surat (R & D) that the distance was 8.5 kilometres. He further submitted that the CBDT in its Circular No.17/2015 (supra) has clearly directed that for the period prior up to AY.2014-15, the distance between municipal limit and agricultural land is to be measured having regard to the shortest road distance. As the subject AY is 2012-13, the said Circular is applicable and distance has to be measured having regard to the shortest road distance and not the arial distance. He further argued that there was opening cash on hand of Rs.12,01,000/- as on

01.04.2011 and agricultural income of Rs.90,000/-, which explains the cash deposit of Rs.12,89,500/-.

6. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) of the revenue supported the order of lower authorities. He submitted that assessee is a non-filler. The distance measured by the CIT(A) was only 6.5 kilometres; hence, the land was a capital asset u/s 2(14) of the Act. He further submitted that assessee has not been able to explain the cash deposit of Rs.12,89,500/- with proper and credible evidence.

7. We have heard both the parties and perused the materials available on record. We have also deliberated upon the case laws relied upon by Id. AR. Ground Nos.1 & 4 pertain to addition of Rs.21,64,895/- on account of LTCG. The facts have already been narrated earlier and hence not repeated. It is to be seen whether the land sold during the year was a capital asset u/s 2(14) of the Act. As per clause (iii) of sub-section (14) of section 2, 'capital asset' means agricultural land in India, not being land situated more than 8 kilometres from the local limits of any municipality or cantonment board. The Id. AR has given a certificate from the Dy. EE (R & B), Surat, according to which the distance was 8.5 kilometres. The CBDT in its Circular No.17/2015 (supra) has made it clear that the shortest road distance has to be measured to decide whether the agricultural land is a capital asset or not. Fore ready reference, the said Circular is reproduced below:

***“CBDT CIRCULAR NO.17/2015, Date: October 16, 2015***

*Sub: Measurement of the distance for the purpose of section 2(14)(iii)(b) of the Income-tax Act for the period to Assessment Year 2014-15*

*“Agricultural Land” is excluded from the definition of capital asset per section 2(14)(iii) of the Income-tax Act based inter alia on its proximity to municipality or cantonment board. The method of measuring the distance of the said land from the municipality, has given rise to considerable litigation. Although, the amendment by the Finance Act, 2013 w.e.f 01.04.2014 prescribes the measurement of the distance to be taken aerially, ambiguity persists in respect of earlier periods.*

*2. The matter has been examined in light of judicial decisions on the subject. The Nagpur Bench of the Hon. Bombay High Court Vide order dated 30.03.2015 in ITA. 151 of 2013 in the case of Smt. Maltibai R. Kadu has held that the amendment prescribing distance to be measured aerially, applies prospectively i.e., in relation to assessment year 2014-15 and subsequent assessment year. For the period prior to assessment year 2014-15, the High Court held that the distance between the municipal limit and the agricultural land is to be measured having regard to the shortest road distance. The said decision of the High Court has been accepted and the aforesaid disputed issue has not been further contested.*

*3. Being a settled issue, no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.*

**[F. No.279/Misc./140/2015-ITJ]”**

7.1 If the facts of the present appeal are considered in the light of the CBDT Circular (supra), it is clear that the distance between the municipal limit and the agricultural land is to be measured having regard to the shortest road distance and not aerial distance. The assessment year involved is AY.2012-13 and as per the certificate issued by the Dy. EE (R & B), Surat, the distance was 8.5 kilometres. Thus, agricultural land was situated beyond 8 kilometres of the municipal limit. Hence, it was not a capital asset within the meaning of section 2(14)(iii)(b) of the Act. The decisions relied upon by the Id. AR are also directly on the issue and support the case of the appellant. In view of these facts, the CBDT Circular (supra)

and decisions relied upon by the Id. AR, the addition of Rs.21,64,895/- towards LTCG is deleted and the grounds are allowed.

8. In the result, ground Nos. 1 & 4 are allowed.

9. Ground Nos.2 & 5 are inter-related and pertain to addition of Rs.57,58,180/- u/s 50C of the Act. The CIT(A) confirmed the addition because the subject land was a capital asset u/s 2(14) of the Act. Since, we have held that the subject land was not a capital asset u/s 2(14) of the Act, application of the provisions of section 50C are not applicable. Therefore, the AO is directed to delete the addition. Hence, the grounds are allowed.

10. In the result, ground Nos.2 & 5 are allowed.

11. Ground Nos.3 & 6 pertain to addition of Rs.12,89,500/- being cash deposited in the bank account during financial year (FY) 2011-12. The appellant submitted that cash was deposited out of cash on hand accumulated from agricultural income. The assessee had shown opening cash balance of Rs.12,01,000/- as on 01.04.2011. However, no supporting evidence was furnished by the assessee before AO or the CIT(A). It was found by AO that assessee had withdrawn cash from bank account on regular interval. In the return filed u/s 148 of the Act, she has shown income of Rs.1,62,947/- and agricultural income of Rs.90,000/-. The CIT(A) has repeated the finding of AO and upheld the addition. No supporting evidence was filed by the assessee before us to substantiate availability of cash of Rs.12,01,000/- as on 01.04.2011. The cash book submitted by the lower authorities was only a feeble attempt to justify deposit of cash by the assessee.

However, the assessee has withdrawn various amounts from her bank account. She has also shown agricultural income of Rs.90,000/- during the year. Considering the totality of facts, it would be reasonable if cash of Rs.4,00,000/- is treated as explained and addition of remaining amount Rs.8,89,500/- is upheld. The AO is, accordingly, directed to restrict the addition to Rs.8,89,500/-.

12. In the result, ground Nos.3 & 6 are partly allowed.

13. Ground No.7 is initiation of penalty proceedings u/s 271(1)(c) of the Act. The AO has only initiated the penalty proceedings but he has not yet levied any penalty. Therefore, the ground is pre-mature and does not require adjudication.

14. In the combined result, the appeal of the assessee is partly allowed.

Order is pronounced in the open court on 11/02/2025.

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

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 11/02/2025

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**// TRUE COPY //**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat