

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.102/Nag./2024
(Assessment Year : 2015-16)

ITA no.222/Nag./2024
(Assessment Year : 2011-12)

Shri Ajit Ganu, Legal Heir of
Late Shri Shripad Gangadhar Guna
Inside Railway Gate
Near Pandhrikar Hospital, Rajapeth
Amravati 444 606 PAN – AFIPG5668P

..... Appellant

v/s

Dy. Commissioner of Income Tax
Amravati Circle, Amravati

..... Respondent

Assessee by : Shri Markand Oak
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 04/02/2025

Date of Order – 21/03/2025

ORDER

PER K.M. ROY, A.M.

Instant appeals by the same assessee are against the impugned order dated 31/01/2024, passed for the assessment year 2011-12 and order dated 23/11/2023, passed for the assessment year 2015-16, by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*].

ITA No.222/Nag./2024
Assessee's Appeal – A.Y. 2011-12

2. In its appeal, the assessee has raised following grounds:-

"1. The learned CIT (Appeals) NFAC has erred, on the facts and the circumstances of the case as well as law on the subject, passing Order under section 250 without affording the opportunity of being heard to the LR of the deceased Assessee even after he was registered on the Portal by the Jurisdictional Income Tax Officer on 23rd January 2024 i.e. well before the impugned Appeal Order was passed, thereby violating the principals of natural justice and vitiating norms of Quasi Judicial Proceedings by passing an Appeal Order against the deceased Person.

2. The learned CIT (Appeals) NFAC has erred, on the facts and in the circumstances of the case as well as law on the subject, in confirming the contention of the Assessing Officer ignoring the Principals of Consistency as laid down in various Judicial Authorities, since the Department/Assessing Officer has been accepting the Returns of Income filed by the Assessee declaring Long Term Capital Gains on sale of plots in the said land since Assessment Year 2003-2004.

3. The learned CIT (Appeals) NFAC has erred, on the facts and in the circumstances of the case as well as law on the subject, in confirming the contention of the Assessing Officer holding that converting the ancestral Agricultural Land, in the year 2002, for Non- Agricultural use and by laying out plots amounts to Business Activity.

4. The learned CIT (Appeals) NFAC has erred, on the facts and in the circumstances of the case as well as law on the subject, in confirming the contention of the Assessing Officer holding the said land as Stock-in-trade on the conversion of Agricultural land to Non-Agricultural use and laying out of plots thereon.

5. The learned CIT (Appeals) NFAC has erred, on the facts and in the circumstances of the case as well as law on the subject, in confirming the contention of the Assessing Officer in treating the gain arising on sale of land as "Business Income" of Rs. 14,15,550.00 instead of "Capital Gains" as shown by assessee amounting to Rs. 9,65,998.00 and treating Long Term Capital Gains arising there from as Rs. Nil, by -

6. The learned CIT (Appeals) NFAC has erred, on the facts and in the circumstances of the case as well as law on the subject, in confirming the contention of the Assessing Officer of consequential disallowance of the deduction u/s 54EC of the Income tax Act, 1961 for Rs. 9,70,000/- invested in NHA Bond by the Appellant.

7. As alternate ground, the Learned CIT (Appeal) NFAC has not considered the Cost of Plot to be deducted from the sale proceeds of the plots sold during the previous under appeal and not considered the provisions of section 45 of the Income Tax Act 1961 for arriving at the taxable Income for taxation.

8. The Assessee craves leave for raising such other additional grounds of appeal or vary/ modify/ amend or withdraw any ground of appeal as may be considered at the time of hearing.

3. The brief facts, as culled out from the synopsis furnished during the hearing are as under:-

"1. That the appellant Shri Shripad Gangadhar Ganu having PAN AFIPG5668P has been filing return of income regularly. The appellant has filed return of income for Assessment Year 2011 2012 relevant to Previous Year ending on 31st March 2011 vide acknowledgement No. 002266 Dated 08/07/2011, declaring Total income of Rs. 239750/-.

2. That the Appellant has during the relevant previous year earned total income under the of following heads of income, viz;

a. Income from Salary/Pension	Rs. 170223.00
b. Income from Capital Gains	Rs. NIL
c. Income from Other Sources	Rs. 69523.00

3. That the Return of Income of the appellant for Assessment Year 2015 2016 relevant to Previous Year ending on 31st March 2015 was selected for scrutiny assessment. The Assessing Officer passed an Assessment Order treating Capital Gain shown by the Assessee as Income from Business from sale of plot. Hence based on the Assessment the then incumbent Assessing Officer issued notice under section 148 of the Act and sought to assess the Income of the appellant for the Assessment Year 2011-12. The Assessee submitted letter on 17/04/2018 that the original return filed on 08/07/2011 be treated as filed in response to notice u/s 148. Further the notice u/s 143(2) & u/s 142(1) was issued on 09/10/2018. In response to the notices issued the assessee furnished the reply and duly complied with the requirements of the Assessing Officer and produced documents and other details as asked for, during the course of scrutiny assessment.

4. That it was explained to the Assessing Officer that the Appellant is a Land Owner and the said land came to be devolved on the Appellant in the following manner:

a. That the Agricultural land comprising of Survey No. 38 admeasuring 7.53 Hectare and survey No. 50 admeasuring 2.34 Hectares situated at mouje Jewad, Pargane: Badnera, Tahsil and District Amravati, was originally owned and possessed by Late. Shri Gangadhar Balkrushna Ganu as his exclusive self-acquired property.

b. That Late. Shri Gangadhar Balkrushna Ganu executed a testamentary will dated 12/01/1958 whereby he bequeathed the said Agricultural land in equal shares to his two sons Shri Shambhura0 Gangadhar Ganu and Shri. Shripad Gangadhar Ganu.

C That Shri Gangadhar Balkrushna Ganu left for heavenly abode on 10/03/1958, thereby devolving the said agricultural land on his two sons as only surviving legal heirs. The copy of the said will is attached on Page No. 21-22 of this compilation.

d. That Shri Shambhuroo Gangadhar Ganu (brother of the Assessee / Appellant) also executed a last testamentary will dated 08/02/1998 whereby he bequeathed his undivided share in the said Agricultural land (i.e. 50%) to his only son Shri Ajit Shambhuroo Ganu. The said last testamentary will was authenticated in the office of Sub- Registrar Amaravati on 24/05/1999. The copy of the said will is attached on Page No. 23-26 of this compilation.

e. That Shri. Shambhuroo Gangadhar Ganu left for heavenly abode on 17/02/1999, thereby devolving his share in the said agricultural land on his only son as only surviving legal heir.

f. Thus the Assessee / Appellant became an exclusive co-owner having 50% distinctive and definite undivided share in the said Agricultural Land along with his nephew Shri. Ajit Shambhuroo Ganu.

g. That the Government of Maharashtra merged the Village Jewad in the Amaravati Municipal Corporation and hence the said Agricultural land became part of the Amaravati urban Agglomeration. The overall effect of the such inclusion in the Municipal Jurisdiction has resulted in increased cost of living of the people in and around the areas which were included in the Amaravati Municipal Corporation. Further various new Rules were made applicable for running Cattle farm and as a consequence the compliance cost had gone up. Further the Agricultural Labour has become scarce and cost of labour has gone up significantly. This has resulted in running Cattle farm and taking agricultural produce un-remunerative and tedious due to increase in cost of labour and compliance.

h. That both the Owners were desirous of disposing of the Land to a good person since the land was acquired by the Assessee's father and naturally they have had emotional attachment to the land which they have been cultivating for more than 45 years. Hence they desired that the such land parcel should be in the hand of good person. However that the Purchaser was not forth coming due to size of the land as well as the enhancement of the Ready Reckoner value due to its inclusion in the Amaravati Urban Agglomeration.

i. That in the light of difficulties as enumerated in preceding paragraphs both the co-owners in the year 2001 realising that the sale of single parcel of land would not be possible. Hence the Assessee and his Nephew Shri Ajit Ganu decided to cut the land into small plots and to avoid violation of anti-fragmentation laws decided to apply for the conversion of the said Agricultural land for Non Agricultural use. The District Collector after completing the procedure prescribed in the Land Revenue Code and MRTP Act granted the conversion of land admeasuring 4.2972 Hectares, i.e. about 4,62,550 sq. ft., out of said Agricultural Land for use of Non- Agricultural purposes vide order no. NAP-34/Jewad-132/ (2001-2002) dated 31/08/2002. The copy of the said NA order is attached on Page No. 27-32 of this compilation.

j. That on obtaining the NA Order as aforesaid the co-owners, with view to realize better value and being convenient in disposing of smaller plots, the Assessee / Appellant along with his co-owner nephew applied for laying out of plots on the said portion of land to the Town Planning Department of Amaravati Municipal Corporation and the Town Planning Officer accorded the

sanction to plan of layout of plots vide sanction letter no. AMC/ADTP/Layout/178/2002 dated 08/02/2002. The copy of the said Sanction letter is attached on Page No. 27-32 of this compilation.

k. That the said sanction letter laid down certain terms and conditions setting out certain obligation and duties. The clause 4 A of the Sanction Order stipulates that the co-owners should construct Internal Roads and Drainage within stipulated time before sale of Plots and further Clause 11 stipulates that the open space and Internal Roads shall be handed over to Municipal Corporation for Public Use.

Hence the construction of internal roads, Sewage and storm water Drains, street light and open spaces etc., are a necessary condition for sale of Plots in the Layout. Thus the cost incurred by the co-owners is cost of improvement in clear and marketable title of the land which is attributable to various plots in the layout.

1. That the co-owners have also decided that, since the land is their Ancestral Land and acquired by father of the Assessee, the sale of plots shall be effected to a good person and to avoid any disputes and legal complications the plots will be sold to persons who will purchase the said plot by paying the sale price in one go and not on instalments. The co-owners were particular of this condition because both of them were never involved in the business activity and they did not have any wherewithal to deal with such situation especially so the Assessee being a retired Government servant.

m. That in view of the constraints elaborated in the foregoing paragraphs, the co-owners began discharging the obligation laid on them in the said sanction letter by laying out internal roads, street lights, open spaces, Sewage and storm water Drains etc., and being persons having limited and meager funds started the disposing of few plots with a view of using part of such funds towards the discharge of obligation laid out in the said sanction letter.

n. That the co-owners were able sale one or two plots in each year due to the condition set by them that the plots will not be sold on installments and the sale price will have to paid by the purchase lump sum at the time of execution and registration of Sale deed. This has resulted in slower disposal rate of the plots as the most of the purchasers were seeking installments and availing of loans from financial institutions.

5. That the Assessee / Appellant after the conversion of the Agricultural land into Non-Agricultural land in the year 2001 has been filing the Return of Income whenever the plots in the layout are sold and declaring the resultant income under the head "Income from Long Term Capital Gain" and accordingly claim indexed cost of acquisition as well as cost of improvements in clear and marketable title. The Return of Income has been so filed since Assessment Year 2003-2004 every year and the Department has been consistently been accepting these Returns of Income.

6. That the Assessee / Appellant along with his Nephew (both having 50% distinctive and definite share in the said plot sold to M/s. Yashashree Engineers and Contractors Amaravati, for a total consideration of Rs.30,30,476.00 (out of which the Assessee / Appellant share being Rs.

15,15,238.00) vide deed of sale registered in the office of sub-registrar 3, Amaravati, thereby conveying right, title and interest in the said plots to said M/s. Yash:Shri Engineers and Contractors Amaravati.

7. That the Appellant computed his gain from above described sale transaction as income under the head Long term Capital Gain. The computation of LTTCG is given below:

INCOME FROM CAPITAL GAINS

Long Term Capital Gain - Other than Securities (General)

INCOME FROM CAPITAL GAINS	
2.1 Long Term Capital Gain Securities(General) Other than	
2.1.1 Land	
1. Sale Consideration (Date of Transfer: 30/06/2014)	1515238
(598, 60A, 60B, 6191A, 61B62A)	
Less:-Sale Expenses	-99688
Net Sale Consideration-(A)	1415550
Acquisition Cost(as on 01/04/1981)	63228
Indexed Acquisition Cost	
(1981-1982)-	449552
(Rs. 63228*711/100)	
Total Indexed Acquisition Cost	-449552
Balance-(A-B)	965998
Less: Exemptions u/s 54EC	970000
Net LTTCG	NIL
Total LTTCG Other than Securities(General)	
INCOME FROM CAPITAL GAIN	NIL

8. The Appellant claimed deduction u/s 54EC of Rs. 9.70 Lacs towards investment in the NHAI Bonds as per the provisions of that section.

9. That the Appellant has earned Rs. 69,523.00 towards income earned on investment in bonds made in earlier years and the same was shown as Income from Other Sources.

10. That During the course of assessment the appellant has filed all the details regarding cost of improvement incurred year wise incurred by the assessee, as also the calculation of cost of improvement per square feet of land considered for calculating long term capital gain while computing taxable income of the assessee. The appellant has considered the cost of land as fair market value of the land as on 01/04/1981 for computing capital gain since the land is held by the assessee/ his father since long before that date.

11. That the Assessing Officer while fixing the assessment chose to make an Addition/disallowance as follows:

a. Sale proceeds of plots of land amounting to Rs. 14,15,550/- is treated by AO as business activity and hence as income under the head Income from Business and Profession instead of Income From Long Term Capital Gains as claimed by the Assessee / Appellant.

b. The Plots in the said layout remaining unsold in the hands of the Assessee / Appellant since 2002 being treated as sock in trade.

c. Cost of improvement of land held as business expenses

12. That the facts enumerated in paragraphs 4 to 14 above are filed with the Appeal Memo before the CIT (Appeal).

13. That on 2nd Janaury 2023 the original Appellant Shri Shripad Ganu left for his heavenly abode leaving him behind his only legal heir by Testamentary Will Shri Ajit Ganu. The Appellant Shri Shripad Ganu bequeathed his all Movable and Immovable Property to Shri Ajit Ganu vide registered Will Dated 19th May 2016 Registered at Serial No. ARN1-2331-2016 Dated 19/05/2016 at the Office of the Joint Sub-registrar City-1, Amaravati.

14. That the after the unfortunate death of the Appellant the date of hearing was fixed on October 2023 and due to non-acceptance of Shri Ajit Ganu as Legal Heir of Late Shripad Ganu at that time, Shri Ajit Ganu could not respond to this notice as he was not aware of the e-mail id on which it was received.

15. That the CIT (Appeal) NFAC on 31ST January 2024 passed an order confirming the Assessment order passed by Assessing Officer Amaravati Circle, Amaravati. The CIT (Appeal) NFAC completely reiterated the reasoning given by the Assessing Officer in the Assessment Order in deciding against the Grounds of Appeal raised by the Assessee in the Appeal.

II. LEGAL CONTENTIONS/ARGUMENTS

A. That the Commissioner of Income tax (Appeals) NFAC has, without providing any opportunity to the Appellant, passed an Appeal Order under section 250, where he chose to reiterate the contentions of the Assessing Officer while dismissing the Grounds of Appeal of the Appellant. The CIT (A) NFAC, it is evident, without going into the documents, evidences and the material submitted by the Appellant, has mechanically followed and copied the contentions of the Assessing Officer. The copy of the said Appeal Order is attached on Page No. 33-41 of this compilation.

It is thus suitable to discuss in details the contentions of the Assessing Officer recorded by him in the Assessment Order.

Further it would not be out of place to bring to your kind notice that the Assessment Order framed by the Assessing Officer is mostly a cut and paste job of the Assessment order passed by the Incumbent Assessing officer for the Assessment Year 2015-16, since the Assessment proceedings were

commenced by issuing notice u/s 148 based on the Assessment proceedings and order for AY 2015.16.

B. That the Assessing Officer has based his contentions on various premises which are contained mainly in Paragraphs 3 and 5 of the Assessment Order can be summed up below: The copy of the said Assessment Order is attached on Page No. 42-50 of this compilation.

i. The act of the Assessee along with his nephew Shri Ajit Ganu to convert Agricultural land in to Non- Agricultural use immediately after the death of his brother Late Shri Shambhurao Ganu shows the intention of the Assessee and his nephew to commence business activity.

ii. The Assessee along with his nephew Shri Ajit Ganu has developed the land between 2001 and 2008, just like normal business trader of plots.

iii. The cutting of plots in a layout on the conversion of Agricultural Land into Non-Agricultural use by the Assessee has resulted in Stock-in-Trade just as normal trader in plots undertake.

iv. Since the Assessee along with his nephew Shri Ajit Ganu has been selling the plots over period of more than 15 years, instead of short period of 2-3 years, after converting the land into Layout of Plots, shows that the activity of selling of plots is nothing but Business Activity.

v. That after selling the property to M/s Yash: Shri Engineers and Contractors, the nephew of the Assessee has made MOU with the same

concern and derived profit of Rs. 16.50 Lacs, this goes on to show that the Assessee not only treated the property as his stock-in-trade but has kept his interest alive in the property.

Now let us take up these contentions of the Assessing officer as summed up in (i) to (v) in above paragraph.

C. Contention of the Assessing Officer

The overall assumption and contention of the Assessing officer which reflects through the contents of Assessment Order is that, "the act of the Assessee along with his nephew Shri Ajit Ganu to convert Agricultural land in to Non-Agricultural use immediately after the death of his brother Late Shri Shambhurao Ganu shows the intention of the Assessee and his nephew to commence business activity".

Contention of the Assessee

1. The Assessee begs to submit following facts and arguments in respect of the contention of Assessing Officer above in the following paragraphs.

2. That the contention of the Assessing Officer that "After his brother's death, his nephew, at the first opportunity converted the said land into plots and started business activity" (Paragraph 19(i)) which impliedly holds that mere

conversion of the Ancestral Agricultural Land in to Non-Agricultural user would itself tantamount to commencement of business activity. The Assessing officer has ignored the proper appreciation of the attendant circumstances which constrained the Assessee and his nephew to convert the said land in to non-Agricultural use and cutting smaller residential plots for disposing of the land. If we look at the reasons enumerated in the foregoing paragraph I (4), the attendant situation faced by the co-owners would become amply clear that the activity of sale of plots is not with the intent of business but to realise optimum value of their ancestral land.

3. That the Assessing Officer, it seems, suggest that the Assessee and his nephew have utilised the death of Late Shambhurao Ganu as opportunity to convert use of land and commence the Business Activity. This contention of the Assessing Officer defies logic and sound reasoning to conclude that this shows the intention of the Assessee to plunge into Business Activity.

D. Contention of the Assessing Officer

The Assessee along with his nephew Shri Ajit Ganu has developed the land between 2001 and 2008, just like normal business trader of plots.

1. The Assessing Officer in Paragraph 3.1, 3.2 and 8.2(0) of the Assessment Order has stated the above which is reproduced below for ready references

"3.1.....However, order of the Collector, Aluavat giving permission for Non-Agriculture purpose pertains to 5 Hector 82 R, But of 118 53 6 bearing Survey No. 38. The Collector Amravati vide andet tid. 31/08/2009 gate permission for non-agriculture residential purpose hand adмеавилия 19872 Hectors which corresponds to 4,62,550 Sq. Ft. The assessee during the assessment proceedings gave year-wise development expenses starting tem year 2002-03, when the assessee started setting plots. The development expenses claimed year-wise is reproduced as under:-

F.Y.	Development expenses	Total Area in Sq.Ft.	Area sold in Sq.Ft.	Development expenses as per Sq.Ft.	Development expenses of sold area (Col.A x 5)	Balance Amount
1	2	3	4	5	6	7
2002-03	1746007	462550	1830	3.77	6907	1739100
2003-04	1840391	460720	9726	3.99	38850	1801541
2004-05	1902097	450994	-	4.21	-	1902097
2005-06	2002653	450994	4844	4.44	21.510	1981143
2006-07	2080619	446150	22638	4.66	105512	1975047
2007-08	3018551	423512	7417	7.13	52864	2965687
2008-09	3057987	416095	8482	7.34	62336	2995651
2009-10	3086128	407613	20587	5.57	155868	2930260

2010-11	3015739	387026	25587	7.79	199376	2816363
2011-12	2894097	361439	16440	8.00	131520	2762577
2012-13	2839495	344999	17847	8.23	146880	2672615
2013-14	2765554	327152	-	8.45	-	2765554
2014-15	2836045	327152	19692	8.67	170730	2665315
2015-16	2731415	307460	-	8.88	-	2731415
2016-17	2731415	307460	10980	9.43	103541	2691526

(Page No. 43-44 of this compilation)

3.2 It is further seen that assessee, along with his uncle Shri Shripad Gangadhar Ganu, after converting 4.2972 Hector of land into non-agricultural land plotted and developed 174 plots. The assessee sold these plots during different financial year's viz. FY. 2002-03, 2003-04, 2005-06, to FY 2012-13 and in FY 2014-15. At end of FY 2014-15, the assessee is still having 125 plots in hand corresponding to more than 3 lacssq. ft. This clearly shows that the plots are "stock in trade" just as in the case of normal business of land development and plot sale. The assessee has sold these plots even after FY 2015-16 relevant to the present assessment year i.e. in F.Y. 2016-17. Uptill now, assessee has sold 49 plots with total sales consideration received up to FY 2015-16 is Rs. 1,64,49,706/-. All these factors shows that the assessee is in full time business activity. During the course of assessment proceedings 2015-16 the assessee himself has accepted that he has developed land between year 2001 & 2008.

(Page No. 44-45 of this compilation)

5. (ii) Further the assessee himself has accepted that he has developed land between year 2001 & 2008." (Emphasis in Italics provided). (Page No. 45 of this compilation)

Contention of the Assessee

2. The Assessee begs to submit facts and arguments in respect of the contention of Assessing Officer in the following paragraphs.

3. That the Assessee has been cultivating the land for Agricultural since 1958, along with his brother Shri Shambhuro Ganu and on the death of his brother with his nephew Shri Ajit Ganu. The said land was gainfully being used for Agricultural purposes as well as incidental agricultural activities such as Cattle and Sheep farm for more than 50 years before it was converted to Non-Agricultural use.

4. That the Assessee and his co-owner was constrained to apply for conversion of land in to non-agricultural use due to its inclusion in the Amaravati Municipal Corporation which resulted in the running of the cattle farm and other cultivating activity becoming un-remunerative due to increase in cost of compliance of the Municipal Regulations as well as scarcity of Labour and resultant increase in cost of hiring labour exorbitantly.

5. That the Assessee along with his co-owner was desirous of disposing of the Land to a good person since the land was acquired by the Assessee's father and naturally they have had emotional attachment to the land which they have been cultivating for more than 50 years. Hence they desired that such land parcel should be in good and noble hands. However that the Purchaser was not forth coming due to size of the land as well as the enhancement of the Ready Reckoner value due to its inclusion in the Amaravati Urban Agglomeration.

6. The circumstances described in above paragraphs constrained the Assessee to apply for conversion of agricultural land in to cutting the same in smaller plots and then disposing off to various persons so that the land will ultimately fall in good hands. For this the extant regulation in MRTP Act stipulates that the user agricultural land be converted to non-agricultural purpose by making an application to Appropriate Authority i.e. District Collector and also submission of Layout Plan of Plots to Appropriate Planning Authority i.e. Amaravati Municipal Corporation. The Assessee made these applications to the prescribed authorities as stipulated. The applications made by the Assessee along with his nephew were duly approved by the Appropriate Authorities in the year 2001-2002.

7. The said Sanction letter of layout of plots stipulated certain necessary and mandatory obligations and duties.

a. The clause 4 A of the Sanction Order stipulates that the co-owners should construct Internal Roads and Sewage and storm water Drains within stipulated time before sale of Plots. The copy of the said Sanction letter is attached on Page No. 29 of this compilation.

b. The Clause 11 stipulates that the open space, Internal Roads, Sewage, storm water Drains and street lights shall be handed over to Municipal Corporation for Public Use. The copy of the said Sanction letter is attached on Page No. 29 of this compilation.

8. The conduct of the Assessee and his nephew during the overall activity undertaken by them for cutting the ancestral agricultural land into smaller residential layout of plots as well as construction of Internal Roads and other basic infrastructure to comply with the obligations set out in the Approval order of layout plans and NA Order reflect no motive to earn profit from the activities of construction of infrastructure as the intent was to meet legally binding obligations so that any legal liability shall arise by its non compliance.

9. Hence the construction of internal roads, Sewage and storm water Drains, street light and open spaces etc., are a necessary and mandatory condition for sale of Plots in the Layout. The Assessee along with his nephew has not voluntarily undertaken this activity to enhance value but to meet the mandatory conditions stipulated by the Appropriate Authority (The District Collector Amaravati). This was necessary for legal and regular capital asset for enabling the Assessee to transfer the same legally to prospective purchasers.

10. Likewise the Plot selling activity clearly shows that the Assessee and his co-owner nephew were emotionally attached to the said land since it is an

ancestral property. This is further evident from the fact that the Assessee and his nephew were selling the plots to the persons with care so that the land would be in good hand in future. The Assessee and his nephew have never resorted to Advertisement for sale of plots and also they adopted the methodology of selling plots to the persons who are ready to execute sale deeds by paying lump sum price in one go at the time of execution of deed of sale. This clearly shows the non-commercial approach of the Assessee.

11. That if we perused the list of the persons in whose favor the various plots were sold. It will crystal clear that the plot were sold to persons who were ready to make lump sum payment and execute transfer deed in their favour. (List of Sale Deed is attached on Page No. 70 of this compilation)

12. Thus the cost incurred by the co-owners is cost of improvement in clear and marketable title of the land which is attributable to various plots in the layout. It is not per se any developmental activity carried out with the motive to enhance value. The non compliance of the conditions of the sanction order would have resulted into creation of unauthorized layout of plots and this would have attracted civil/criminal/penal proceedings for the violations of the provisions of MRTP Act 1963 as well as The Maharashtra Revenue Code.

E. Contention of the Assessing Officer

The cutting of plots in a layout on the conversion of Agricultural Land into Non-Agricultural use by the Assessee has resulted in Stock-in-Trade just as normal trader in plots.

1. The Assessing Officer in Paragraph 19(v) of the Assessment Order has stated the above which is reproduced below for ready reference.

"5 (v) It is further seen that assessee, along with his nephew Shri Ajit Shambhuroo Ganu, after converting 4.2972 Hecter of land into non-agricultural land plotted and developed 174 plots. The assessee sold these plots during different financial years viz. FY 2002-03, 2003-04, 2005-06 to FY 2012-13 and in FY 2014-15. At the end of FY 2014-15, the assessee is still having 125 plots in hand corresponding to more than 3 lacs sq.ft. This clearly shows that the plots are "stock-in-trade" just as in the case of normal business of land development and plot sale. The assessee has sold these plots even after FY 2015-16 relevant to the present assessment year ie. in F.Y. 2016-17. Up till now, assessee has sold 49 plots with total sales consideration received up to FY 2015-16 is Rs. 1,64,49,706/-. All these factors shows that the assessee is in full time business activity." (Emphasis in Italics provided). (Page No. 46 of this compilation)

Contention of the Assessee

2. The Assessee begs to submit facts and arguments in respect of the contention of Assessing Officer in the following paragraphs.

3. The Assessee has never undertaken any business activity during his life time. He was employed in the State Government Department and after retirement from the service he earned his income from Pension, Bank Interest and Interest on capital gains bonds etc. Likewise the nephew of the Assessee

Shri Ajit Ganu who is co-owner of the land has also not undertaken any commercial or business activity in his life time. He was cultivating land as well as undertaking incidental cattle farming and earning income from these activities and also from interest from bank deposits and capital gains bonds.

4. That mere conversion of Agricultural Land for Non-Agricultural use due to attendant circumstances which are enumerated in details in the foregoing paragraphs and particularly in I (4) supra will show that the Assessee was constrained to apply for conversion and casting of layout of smaller plots due to non-salability of larger parcel of land.

5. That the contention of the Assessing Officer regarding quantum of the to the tune of 174 plots out of which 125 plots corresponding to more than 3 lacs sq.ft remaining unsold at the end of previous year relevant to Assessment Year under Appeal and duration of period over almost 15 years and more during the sell of plot is being undertaken shows that the "shows that the plots are "stock-in-trade" just as in the case of normal business of land development and plot sale" is without any logic and reasoning.

6. The attendant circumstances under which the Assessee and his nephew were constrained to cut land into smaller plots, as enumerated in forgoing paragraphs clearly show that there was never any intention on the part of the Assessee to indulge in "adventure in the nature of trade". Likewise the Assessee has never indulged in purchase and sale of plots. He was solely concerned in selling the plots on his ancestral land, hence the contention of the Assessing Officer that the conversion of land into smaller plots is "Stock-in-trade does not hold good on any legal principal.

F. Contention of the Assessing Officer

Since the Assessee along with his nephew Shri Ajit Ganu has been selling the plots over period of more than 15 years, instead of short period of 2-3 years, after converting the land into Layout of Plots, shows that the activity of selling of plots is nothing but Business Activity.

1. The Assessing Officer in Paragraph 5(iii) of the Assessment Order has stated the above which is reproduced below for ready reference.

5 (ii) the main contention of the assessee is that he has obtained the license for colonizing during 2001 and sold the land by cutting into plots and colonizing once done is not regular activity. The assessee relied on the judgment of Madras High Court in the case of CIT vs. Mohd Mohideen dtd 10/11/1988 (178 ITR 393 Mad). However the facts of the case are not similar to that of the Assessee's case. In this cited case, the purchased/ sold the plots within short span of two years while the assessee has started selling the land/ plot since FY 2002-03 and regularly selling year after year and for the last 10 years sold 69 plots out of 194 plots and still is having stock of 135 plots in hand at the end of preceding year relevant to this assessment year. Thus the ratio of the case cited by the assessee is clearly not applicable to the case of the assessee." (Emphasis in Italics provided). (Page No. 45-46 of this compilation)

Contention of the Assessee

2. *The Assessee begs to submit facts and arguments in respect of the contention of Assessing Officer in the following paragraphs.*

3. *That the Assessing Officer, it appears, has based his contentions on the sole premise that the period of selling plots is a prolonged one i.e. for more than 15 years and still at the end of previous year relevant to Assessment year 2015-16 the Assessee along with his Nephew is holding 135 Plots having an area of around 3 Lac Sq.ft unsold, hence the activity of Sale of Plots is a Business Income and the activity of sell of plots is an adventure in the nature of trade.*

4. *The Assessing Officer contends that if the selling activity is completed with in short span of say 2-3 years to realise value of Land then the Income arising from sell of plots may have been eligible for treated as "Income from Long Term Capital Gains". In furtherance of this contention the Assessing Officer has discussed the facts of the case of CIT us. Mohd Mohideen dtd. 10/11/1988 (178 ITR 393 Mad) in paragraph 19 (iii) of the Assessment Order, the relevant portion of the paragraph is reproduced below:*

"However the facts of the case are not similar to that of the Assessee's case. In this cited case, the purchased/ sold the plots within short span of two years while the assessee has started selling the land/ plot since FY 2002-03 and regularly selling year after year and for the last 10 years sold 69 plots out of 194 plots and still is having stock of 135 plots in hand at the end of previous year relevant to this assessment year. Thus the ratio of the case cited by the assessee is clearly not applicable to the case of the assessee."

5. *It is respectfully submitted that the AO trying to paint the activity of selling of land by cutting into smaller lots with same brush without appreciating that test of characterizing any activity as "Adventure in the nature of trade" would depend on the facts of each and every case and laying down universal test would not be desirable and appropriate. The observations to this effect have also been made by the Hon'ble Supreme Court in various judgments.*

G. Contention of the Assessing Officer

That after selling the property to M/s Yash: Shri Engineers and Contractors, the nephew of the Assessee has made MOU with the same concern and derived profit of Rs. 16.50 Lacs, this goes on to show that the Assessee not only treated the property as his stock-in-trade but has kept his interest alive in the property.

1. *The Assessing Officer in Paragraph 5(vi) and 5(vii) of the Assessment Order has stated the above which is reproduced below for ready reference.*

**5 (vi) After outright selling the property to M/s. Yash: Shri Engineers & Contractors, the assessee's nephew Shri Ajit Shambhuroo Ganu has again made MOU with the same concern and derived profit of Rs.16.50 Lacs on the plots already sold jointly the assessee and his nephew and on which assessee's share was 50%. It is further seen that, the assessee's nephew has*

made separate MOU for every group of plots sold by him jointly with his nephew Shri Ajit Shambhuraao Ganu. As per the year-wise chart given by to M/s. Yash: Shri Engineers & Contractors, the assessee's nephew has started receiving profit right from F.Y. 2012-13 and received profit even in F.Y. 2015-16 & 2016-17 i.e. after the previous year relevant to the current assessment year. Total profit, the assessee's nephew has received up till F.Y. 2016-17 is over Rs.33,40,000/-. This MOU and investment & income derived by the assessee's nephew from land, he jointly sold with the assessee, alone goes to show that the assessee not only treated the property as his stock-in-trade, but even after sale 'kept his interest alive on the property by allowing his nephew to claim 35% of the profit on sale of flats during all these years including relevant previous year. (Emphasis in Italics provided) (Page No. 46 of this compilation).

(vii) It is thus seen that the assessee after acquiring the land after developing it and actually divided the land into plots and sold the same in parcel. The magnitude of transaction of sale property is also substantial in this case. The transaction of sale of plots has been frequent and these sales the assessee is executing for the last 12 years and it has been continued after the end of previous year relevant to the assessment year 2011-12. Further the conduct and subsequent dealing of the assessee in respect of the property also shows profit motive of the assessee. He has kept his interest alive in the property even after the sale of the property by making MOU with the concern to whom he has outright sold the plots. All these circumstances stamp the character of trading activity. (Emphasis in Italics provided) (Page No. 46-47 of this compilation).

Contention of the Assessee

2. The Assessee begs to submit facts and arguments in respect of the contention of Assessing Officer in the following paragraphs.

3. That the contention of the AO on which he arrived at the conclusion that the Assessee and his nephew were involved in business activity is based on the MOU entered into by Shri Ajit Ganu with M/s. Yash: Shri Engineers & Contractors Amaravati (Company). The said MOU between Shri Ajit Ganu and the said company was regarding investment of freehold funds of shri Ajit Ganu by way of unsecured loan to be utilised for the development of the project being undertaken by the said company. The project for which the funds were made available was specified in the said MOU and the funds were to remain invested till the completion of the specified project by the company. The surplus earned by the company from the specified project was to be given to the extent of 35% to Shri Ajit Ganu as compensation towards investment of the funds. The said company has purchased the plots sold by the the Assessee and his nephew in the previous year relevant to Assessment Year 2015-16 in the month of June 2014. Likewise the said company commenced the development of residential scheme on these plots in November and the funds invested by shri Ajit Ganu was also earmarked for this residential scheme. (Page No. 51-55 of this compilation).

4. That the contention of the AO regarding the Assessee "has kept his interest alive in the property even after the sale of the property by making MOU with

the concern to whom he has outright sold the plots. All these circumstances stamp the character of trading activity" is far fetched since the Assessee has never invested any funds with the said company nor he has executed any MOU with the said company and has never earned any income by way of surplus or interest from the said company.

5. That the Assessing Officer is trying to fasten the transaction of extension of funds on loan undertaken by Shri Ajit Ganu and said company on the Assessee as explained in following points.

The Assessee is complete stranger to the alleged transaction which has been undertaken by Ajit Ganu and said company.

ii. No documentary proof, linking the Assessee with the alleged transaction, has been brought on record by the Assessing officer.

The transaction of extending funds as loan has taken place long after the Assessee and his nephew have extinguished their Ownership rights, title and interest in the said plots sold during the previous year relevant to Assessment Year 2015-16. Hence it would be farfetched to infer that the alleged transaction would have any impact such as keeping alive interest of the Assessee or his nephew in the said plots.

iv. From the reading of the contents of the said MOU, no such intent can be deduced that the Assessee and his nephew have kept interest alive in the said plots.

Moreover once the conveyance deed is executed and registered then any interest in the said plots can only be secured by way of registered deed and the nature of such instrument shall be such which in clear terms reserve any right or interest in the immovable property of the person seeking any such right or interest. The said MOU is unregistered document and mainly restrict itself to protecting the money extended as loan by Shri Ajit Ganu and any income to be paid to him by way of surplus.

6. That the contents of the MOU basically show the nature of the transaction envisaged is mainly a transaction loan for the purpose of utilizing it into development of project undertaken by the said company. The salient features of the said MOU are discussed below:

The funds extended by Shri Ajit Ganu were intended as unsecured loan as the said company requested that Shri Ajit Ganu extend some amount initially.

ii. The said MOU stipulates that the parties will contribute equal funds for construction and development of the scheme.

The said MOU shows the clear intent of the parties that Shri Ajit Ganu along with his HUF shall earn interest on the funds extended. Since the progress of any real estate project is never linear it was decided that a formula in the form of calculating 35% (17.5% each by him in individual capacity and as a karta of HUF) of the surplus earned by the said Company be calculated as the amount of total interest payable during the period of implementation of project. It was

further decided that any excess or deficit in payment of such interest shall be adjusted at the end of period of implementation of said project.

iv. That the funds extended by Shri Ajit Ganu shall be exclusively utilised for the construction of the said scheme and for no other purpose.

v. That the said company is first obliged to utilised the booking amount received by it from the prospective purchasers for execution of the said scheme and then if any shortfall arises then call upon Shri Ajit Ganu to extend additional funds.

vi. That the execution and development of the said scheme was exclusively under the said company and Shri Ajit Ganu was not supposed to be involved in the said execution.

vii. Likewise all the attendant rights and obligation of the developer of the scheme were exclusively undertaken by the said company and Shri Ajit Ganu has never been involved in such activities or any such right was given to him.

viii. The bank account was in the name of the said company and was exclusively operated by the said company and no right was given or reserved for Shri Ajit Ganu to operate such bank account.

ix. The booking and selling of units was exclusive domain of the said company and Shri Ajit Ganu was not given any right.

The MOU do provide for certain clauses to safeguard the funds extended by Shri Ajit Ganu as loan such as (a) relationship envisaged under the MOU to independent and not a partnership (b) the obligation of the said company to inform that the loan is taken from Shri Ajit Ganu (c) MOU shall remain in force till completion of the said scheme.

7. That the execution of said MOU, as explained in foregoing paragraph has no business element involved in it and Shri Ajit Ganu has been declaring whatever income received from the said company in the Income Tax Return under the head "Income from Other Sources" as interest without claiming any deduction towards expenses for earning such income. (Copies of ITR-V from A.Y. 2011-12 to A.Y. 2015-16 is attached on Page No. 56-69 of this compilation).

8. It is humbly submitted that in the light of the discussion in the foregoing paragraphs, a conclusion can safely be drawn that the alleged transaction entered into by Shri Ajit Ganu and the said company is nothing but a transaction of extension of funds as loan to be utilised for the purpose of execution of specific scheme. It is only a coincidence that the said scheme happens to be one which is being executed on the plots sold by the Assessee and his nephew. The scheme could have been any other scheme undertaken by the said company.

9. Hence the contention of Assessing Officer that due to the alleged transaction undertaken by Shri Ajit Ganu and the said company shows intent

of the Assessee and his nephew to undertake selling of plots as business activity has no legs to stand and is farfetched."

4. We have gone through the records meticulously and have lent a dispassionate hearing. The learned CIT(A) had confirmed the addition by holding as follows:-

"Grounds No.2 &3:

Upon perusal of the ground raised by the assessee and reasoning given by the AO in assessment order at para 3, 4 & 5, it is found that the assessee in support of the claim of capital gain had submitted various case laws, However, facts of these cases were not similar to the present case and ratio was not squarely applicable to the appellant's case. The assessee, along with his nephew Shri Ajit Shambhuroo Ganu, after converting 4.2972 Hector of land into non-agricultural land plotted and developed 174 plots. The assessee sold those plots during different financial years viz. FY 2002-03, 2003-04, 2005-06 to FY 2012-13 and in FY 2014-15. At the end of FY 2014-15, the assessee was still having 125 plots in hand corresponding to more than 3 lacs sq ft. That clearly showed that the plots were "stock-in-trade" just as in the case of normal business of land development and plot sale. The assessee had sold these plots even after FY 2015-16 relevant to the present assessment year i.e. in F.Y.2016- 17. Till the year under consideration the assessee had sold 49 plots with total sales consideration received upto FY 2015-16 was Rs. 1,64,49,706/-. All those factors showed that the assessee was in full time business activity. Therefore, the AO had reason to believe that business income of Rs. 14,15,550/-had escaped assessment within the meaning of section 147 of the Income Tax Act, 1961 for the A.Y.2011-12. Again, it was seen that the assessee after acquiring the land after developing it and actually divided the land into plots and sold the same in parcel. The magnitude of transaction of sale property was also substantial in the present case. The transaction of sale of plots had been frequent and those sales the assessee was executing for the last 12 years and it had been continued after the end of previous year relevant to the assessment year 2011-12. Further the conduct and subsequent dealing of the assessee in respect of the property also showed profit motive of the assessee. He had kept his Interest alive in the property even after the sale of the property by making MOU with the concern to whom he had outrightly sold the plots. All these circumstances stamped the character of trading activity. All the circumstances showed that the assessee was in full time business activity and on the profit on sale consideration received from sale of plots; the assessee was liable to be charged under the head income from "business and profession". In view of this, profit on sale of plots at of Rs. 14,15,550/- is added and is assessed as business Income of the assessee. Therefore, the AO considering the facts and in the circumstances of the case as well as law on the subject, rightly treated the gain arising on sale of land as "Business Income" of Rs. 14,15,550.00 instead of "Capital Gains" as shown by assessee amounting to Rs. 9,65,998.00 and Long Term Capital Gain

arising there from Rs. Nil and not erred in disallowing assessee's claim for deduction u/s 54EC of the Act totalling to Rs.9,70,000/-

Therefore the Ground No.s 2 & 3 are dismissed."

5. We are not in agreement with the assessment order passed by the Assessing Officer and as sustained by the learned CIT(A) to hold the activity as that of business, because there is no element of purchase or organised activity or any active involvement of the assessee. Mere selling the land over a number of years clearly underscores that the assessee was never a trader, because he is holding the land for a considerable period of time to enhance the value of capital appreciation. Thus, the addition sustained on account of business income is hereby reversed placing reliance on the judgment of the Hon'ble Madras High Court in CIT v/s Mohammed Mohideen, [1989] 178 ITR 393 (Mad.), wherein the Hon'ble Court has held as under:-

"A sale of immovable property may possibly be a trading or commercial transaction, but need not necessarily be so... If a land-owner developed his land, expended money on it, laid roads, converted the land into house sites and with a view to get a better price for the land, eventually sold the plots for a consideration yielding a surplus, it could hardly be said that the transaction is anything more than a realisation of a capital investment or conversion of one form of asset into another. Obviously, the surplus in such a case will not be trading or business profits because the transaction is one of realisation of assets in investment rather than one in the course of trade carried on by the assessee or an adventure in the nature of trade." We are of the view that even in this case, the same position holds good as there is no material to indicate that the assessee ever intended to indulge in any trading activity."

6. The learned CIT(A)'s reliance on subsequent conduct of-course is flawed and baseless because he failed to understand that the assessee is only a passive investor and has not himself played into the active role of marketing, sales promotion, liaisoning, etc., as is expected from a trader. The

authorities below have disregarded the judicial precedents on flimsy grounds. They have relied on irrelevant circumstances which have occurred subsequently. The computation of income is further flawed and baseless since no abatement is given of the cost. Simply addition of closing stock without bringing on record the value of opening stock is against the established principles of accounting. Nowhere the authorities below have clarified about the line of reasoning adopted in the case of co-owner. Judicial propriety postulates uniform and consistent judicial dictum. Accordingly, the re-characterization of head of income is ergo jettisoned. The grounds raised by the assessee are allowed and the Assessing Officer is directed to accept the income as returned under the head "*Capital Gain*".

7. In the result, appeal by the assessee for A.Y. 2011-12 stands allowed.

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8. After hearing both the parties and on a perusal of the material available on record, we find that issues raised by the assessee in this appeal are identical to the issues raised by the assessee in its appeal for the assessment year 2011-12, which we have decided in favour of the assessee and against the Revenue in Para-2 to 6 of this order. Since the issue for our adjudication being identical, except variation in figures, consistent with the view taken therein in assessee's own case cited supra and respectfully following the findings given therein, we set aside the impugned order passed by the learned CIT(A) and allow the grounds raised by the assessee in its entirety.

Accordingly, we set aside the impugned order passed by the learned CIT(A) by allowing all the grounds raised by the assessee.

9. In the result, appeal by the assessee for A.Y. 2015-16 stands allowed.

10. To sum up, assessee's appeal for A.Y. 2011-12 and 2015-16 are allowed.

Order pronounced in the open Court on 21/03/2025

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

**Sd/-
K.M. ROY
ACCOUNTANT MEMBER**

NAGPUR, DATED: 21/03/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur