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.67/Nag./2025
(Assessment Year : 2014–15)

Manisha Ashutosh Shewalkar
West High Court Road
Laxmi Bhavan, Nagpur 440 010
PAN – AJIPS1038B ……………. Appellant

v/s

Income Tax Officer
Ward–5(3), Nagpur .... Respondent

Assessee by : Shri Manoj G. Moryani
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 03/04/2025	Date of Order – 04/04/2025

O R D E R

PER V. DURGA RAO, J.M.

Aforesaid appeal by the assessee is emanating from the impugned order dated 15/01/2025, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2014–15.

2. The assessee has raised following grounds:–

"1. The order passed U/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 is illegal, invalid and bad in law;

2. On the facts and circumstances of the case, the Ld. NFAC failed to consider that agriculture income were duly shown and accepted in previous years by revenue, therefore the order passed is illegal, invalid and bad in law;

3. On the facts and circumstances of the case, the Ld. CIT(A) NFAC failed to consider actual use of the land at the time of Memorandum of Understanding dated 15/06/2012 was agriculture land, therefore order passed is illegal, invalid and bad in law;

4. On the facts and circumstances of the case, the Ld. CIT(A) NFAC failed to consider that land were duly shown as agriculture land in sale deed as well as Memorandum of Understanding dated 15/06/2012, therefore the order passed is unjustified, unwarranted and excessive;

5. On the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) National Faceless Appeal Center [CIT(A) NFAC] confirmed the addition of Rs. 1,11,50,582/- made by assessing officer is unjustified, unwarranted and excessive;

6. On the facts and circumstances of the case, the Ld. CIT(A) NFAC erred in not considering that the land sold by the assessee is agriculture land and situated beyond 8 Kms from Municipal limit of Nagpur and is exempt from tax, therefore addition made is unjustified, unwarranted and excessive;

7. On the facts and circumstances of the case, the Ld. CIT(A) NFAC erred in not considering that the land sold by the assessee is agriculture land as shown in extract of 7/12 and also as per Memorandum of Understanding dated 15/06/2012, therefore without considering government land record addition made is illegal, invalid and bad in law;

8. On the facts and circumstances of the case, the Ld. CIT(A) NFAC ought to have considered that the land is situated at 8 Kms away from Nagpur Municipal Limit as well as extract of 7/12 showing as agriculture land hence income earned from agriculture land by way of sale is exempted and not capital assets of the assessee as per provision of section 2(14) Income Tax Act, therefore addition made is illegal, invalid and bad in law;

9. On the facts and circumstances of the case, the Ld. CIT(A) NFAC erred in not considering that the aforesaid;

agriculture land was converted into non-agriculture as per the order of the Deputy Divisional Officer, Nagpur, in which clearly mentioned that conversion application made by the Purchaser Varon Auto Kast Ltd. and not assessee, therefore addition made is illegal, invalid and bad in law;

10. The assessee is denied the liability of interest charge U/s. 234A, 234B and 234C of the Income Tax act, the same may kindly be deleted;

11. The appellant craves leave to amend, add or take a new ground or grounds at the time of hearing."

3. Facts in Brief:– The Assessing Officer received information from DDIT (I&CI)-1, Nagpur, that during the assessment year under consideration, the assessee, jointly with two others, had sold an immovable property i.e.,

agricultural land totalling area 7.16 Hectares, situated at Mouza Chimnazari, P.S.K. 84, to M/s Varon Auto Cast Ltd., which was valued at ₹ 4.50 crore, which was more than the valuation of ₹ 1,91,75,000, as determined by the Stamp Duty authority. For the assessment year 2014–15, the assessee had filed her return of income, but has not offered the Capital Gain Tax stating that the asset sold is not a capital asset. Therefore, the Assessing Officer was of the view that as the land sold at enhanced price more than the normal, sale of prevailing sales can be regarded as capital assets. Thus, the assessee's case was reopened under section 147 of the Income Tax Act, 1961 (*"the Act"*) by issuing notice 04/01/2019, under section 148 of the Act in response to the which, the assessee, on 08/02/2019, filed her return of income for the assessment year 2014-15 declaring income at ₹ 5,35,480. The Information u/s 133(6) was called for from Revenue Department, Talathi Karyalaya, Tahsil Nagpur (Rural) on 04.11.2019 regarding the 7/12 extract of the land. The Assessing Officer, on a perusal of the 7/12 extract, noticed that no crop had been grown during the assessment year 2013-14 i.e., in the previous year of the transfer of land. Further, as stated by the Assessing Officer, the assessee had failed to submit any documentary evidences regarding the agricultural activities, carried out in the land, viz. sale/ purchase, bills of the seeds of the crop, fertilizers, agricultural produce, payment made to the labour, name, address of the purchaser of the agricultural produce etc., and the assessee had also not offered any agricultural income or loss in the return of income filed for the preceding assessment year 2012-13 and 2013-14. The Ward Inspector was deputed by the Assessing Officer to conduct enquiries of the site. She has reported that

the construction work was undergoing for last 4-5 years. Thus, for the Assessing Officer, it was clear that the land was purchased/sold for non–agricultural purpose. Therefore, the Assessing Officer held the characteriza–tion of the land being capital asset and transfer of the same would result in capital gain, hence the land sold is a capital asset which is liable for capital gain tax. Accordingly, the Assessing Officer made addition of ₹ 1,11,50,582, on account of capital gain towards 25% share in the said land.

4. On appeal, the learned CIT(A) confirmed the assessment order passed by the Assessing Officer. Consequent upon passing of the impugned order, the assessee is in further appeal before the Tribunal.

5. Before us, the learned Counsel for the assessee reiterated the arguments put forth before the authorities below. Following documents have been placed on record by the learned Counsel for the assessee.

> *"1. Copy of acknowledgment of return and computation of income;*
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> *2. Copy of acknowledgment of return U/s. 148 and computation of income;*
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> *3. Copy of Sale Deed dated 21/06/2013;*
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> *4. Copy of Extract of 7/12;*
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> *5. Copy of certificate dated 06/09/2016 regarding distance;*
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> *6. Copy of Google Map;*
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> *7. Copy of order dated 12/06/2013 regarding non-agriculture land along with English translated copy of order;*
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> *8. Copy of Memorandum Understanding dated 15/06/2012;*
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> *9. Copy of notice U/s. 148 of the Act dated 04/01/2019;*
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> *10. Copy of notice U/s. 142(1) of the Act dated annexure 08/12/2019 along with annexure;*

11. Copy of show cause notice dated 03/12/2019;

12. Copy written submission filed before assessing officer;

13. Copies of notice U/s. 250 of the Act dated 05/01/2021 & 21/12/2023;

14. Copy of Remand Report dated 18/11/2024;

15. Copy of letter dated 06/12/2024 for granting opportunity of Video Conferencing;

16. Copy of letter dated 18/12/2024 for intimation schedule of personal hearing through video conferencing;

17. Copies of written submission filed before CIT(A) from time to time along with relevant judgments and copies of acknowledgment of e-proceedings response."

6. On the other hand, the learned Departmental Representative supported the impugned order passed by the learned CIT(A) and prayed that the concurrent findings of the authorities below need not be reversed.

7. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. As also contended by the learned Counsel for the assessee, we find that the land was agriculture land as per revenue records and located beyond the municipal limits, qualifying the exemption under section 2(14) of the Act. The agricultural income had been consistently reported in previous years, demonstrating the said land as agricultural in nature. We further find that the enquiry conducted by the Assessing Officer is after six years of sale of the said immovable property and as such the same is futile due to passage of time. While going through the material on record, we further find that the sale was for agricultural purposes and the non–agricultural conversion was initiated by the purchaser and not by the assessee. Page–56 and 57 of the Paper Book is relevant in this regard. The learned Counsel for the assessee

relied on various case laws in support of his contentions. We particularly consider it relevant to reproduce from the order passed by the Co–ordinate Bench of the Tribunal, Chennai Bench, in Shri Pandit Vettrivel v/s ACIT, ITA no.146/Chny./2020, A.Y. 2007–08, vide order dated 22/09/2023, wherein the Hon'ble Judicial Member was a party to the Coram, on similar issue, the Bench held as under:–

> *"8. We find that the assessee has furnished Adangal Extract Receipts issued by Tahsildar, Perundurai dated 21-11-2017 where the agricultural crop 'corn' is shown as cultivated on the agricultural land. The assessee has also furnished Electricity Board Receipts. The assessee has been granted subsidy on electricity charges. The assessee has also furnished Land Test Report mentioning soil content and nature of crop which could be grown on the land. The copy of Land Revenue Tax Receipt dated 29.03.2007 for Fasli Year 1416-Perundurai Taluk has also been placed on record. The Village Administrative Officer Letter dated 29-03-2007 confirm that the village Kengayapalaym has population of less than 1600 people. In the Patta, land has been classified as "Punjal" wet land. The assessee has furnished agricultural Income Receipts dated 10-11-2006*
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> *& 10-08-2006 in support of agricultural produce. The Ploughing Expense Receipts has also been placed on record. All these documents supports the case of the assessee. However, the lower authorities has not placed on record any contrary document to rebut the same rather they have gone on the prime reasoning that the area where the impugned land was situated, had commercial potential and the land was acquired only as a part of real estate business to reap the benefits of commercialization. However, the fact that the land was classified as agricultural land in the revenue record remain uncontroverted before us though the assessee may not be successful in establishing that the whole parcel of land was put to agricultural activities during the year. However, the said fact, in our considered opinion, would not jeopardize the claim of the assessee and would not alter the character of land as an agricultural land. Upon perusal of all these documents, it could be concluded that the assessee has fairly established that the land was agricultural land and had duly discharged the onus as casted upon him, in this regard. The onus, now, was on revenue to rebut the documentary evidences of the assessee and bring on record adverse material to suggest that the land was not classified as an agricultural land. However, nothing of that sort is available on record.*
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> *9. The Hon'ble High Court of Madras in the case law of Shakuntala Vedachalam (369 ITR 558), considering the decision of Hon'ble Apex Court in Raja Benoy Kumar Sahas Roy (32 ITR 466), held as under: -*
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> *9. The issue involved in the above Tax Case (Appeals) lies on the narrow compass, viz., whether the lands sold by the assessees are agricultural lands*

and whether they are entitled to the benefit of exemption from capital gains tax.

10. It is on record that in a report has been submitted by the revenue authorities, it is admitted that the lands are classified as agricultural lands in the revenue records and they are dry lands. The remand report of the Assessing Officer in this regard reads as follows:

"During the time of assessment proceedings itself, a confirmation was obtained from the Headquarters Deputy Tahsildar, Thirukazhukundram who has certified in his letter dated 23.12.2010, referred to at 2 above, that in the lands in question casuarinas are grown for the past one and a half year and hence the same are agricultural lands. He has also confirmed in the said letter that the lands are situated at one kilometer distance from the Town Panchayat of Mamallapuram (i.e. within the specified distance from the outer limits of the nearest municipality/town panchayat) and the population of the Mamallapuram Town Panchayat as per 2001 census was 12.345".

11. The assessee has also produced a copy of the adangal and the letter from the Tahsildar, which showed that the lands were agricultural in nature and the Revenue has also accepted that the lands are falling within the restricted zone in terms of Section 2(14) of the Income Tax Act.

12. Hence, the only point that has to be considered is that whether the test as laid down in the decision reported in Siddharth J. Desai (supra) has been satisfied by the assessees. In the said decision, in paragraph 11, it is held as follows: "On a conspectus of these cases, several factors are discernible which were considered as relevant and which were weighed against each other while determining the true nature and character of the land. It may be useful to extract from those decisions some of the major factors which were considered as having a bearing on the determination of the question. Those factors are:

(1) Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue?

(2) Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?

(3) Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement?

(4) Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land?

(5) Whether, the permission under s. 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land? If so, when and, by whom (the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?

(6) Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether such cesser and/or alternative user was of a permanent, or temporary nature?

(7) Whether the land, though entered in revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes?

(8) Whether the land was situated in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural?

(9) Whether the land itself was developed by plotting and providing roads and other facilities?

(10) Whether there were any previous sales of portions of the land for non-agricultural use?

(11) Whether permission under s. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non agriculturist? If so, whether the sale or intended sale to such non-agriculturist was for non-agricultural or agricultural user?

(12) Whether the land was sold on yardage or on acreage basis?

(13) Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?

At the risk of repetition, we may mention that not all of these factors would be present or absent in any case and that in each case one or more of those factors may make appearance and that the ultimate decision will have to be reached on a balanced consideration of the totality of circumstances."

13. According to the Tribunal that if the above tests are applied, the assessees could not satisfy any of the conditions except condition Nos. 1,5,11 and 12. The Tribunal held that the assessees could not prove that the lands was actually or ordinarily used for agricultural purposes. This reasoning does not appear to be correct in view of the above-said decision of the Gujarat High Court, wherein it was clearly held in Clause (1) in paragraph 11 that whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue has to be considered for grant of exemption.

14. Thus it is evident from the above, which clearly states that any one of the above factors can be present in a case to qualify for the benefit of classification as agricultural lands. In this case, the assessees have qualified under clause 11(1) since as per the adangal records, these lands were classified as agricultural lands and the assessees have also paid revenue kist, namely, revenue payment. Therefore, the Tribunal has misconstrued the judgment of the Gujarat High Court (supra) that all conditions laid down in paragraph 11 should be satisfied, which is not a correct interpretation.

15. To get exemption, the assessee has to satisfy the conditions laid down in Section 2(14) of the Income Tax Act, which reads as follows:

2(14) "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include-

(1) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession;

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family dependent on him:

Explanation. For the purposes of this sub-clause, "jewellery" includes (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel: (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel; (iii) agricultural land in India, not being land situate

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous y

(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette: (iv) 68 per cent. Gold Bonds, 1977, or 7 per cent. Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government:

(v) Special Bearer Bonds, 1991, issued by the Central Government:

(vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government

16. Once the Tribunal has accepted that the classification of lands as per the revenue records are agricultural lands, which are evidenced by the adangal and the letter of the Tahsildar and satisfies other conditions of Section 2(14) of the Income Tax Act, we are of the view that the Tribunal has misdirected itself as stated above.

17. Yet other reason given by the Tribunal is that the adjacent lands are put to commercial use by way of plots and therefore, the very character of the lands of the assssees is doubted as agricultural in nature. The manner in which the adjacent lands are used by the owner therein is not a ground for the Tribunal to come to a conclusion that the assessees' lands are not agricultural in nature. The reason given by the Tribunal that the adjacent lands have been divided into plots for sale would not mean that the lands sold by the assessees

were for the purpose of development of plots. Also the reasoning given by the Tribunal "No agriculturists would have purchased the land sold by the assessee for pursuing any agricultural activity" is based on mere conjectures and surmises.

18. The plea of the learned standing counsel appearing for the Revenue that there was no agricultural operations prior to the date of sale is of no avail as the definition under Section 2(14) of the Income Tax Act has the answer to such a plea raised. Further more, it is also on record that the lands are agricultural lands classified as dry lands, for which kist has been paid. 19. The view of the assessee is fortified by the decision reported in Raja Benoy Kumar Sahas Roy (supra), wherein, it is held as follows: "There was authority for the proposition that the expression "agricultural land" mentioned in Entry 21 of List II of the Seventh Schedule to the Government of India Act, 1935, should be interpreted in its wider significance as including lands which are used or are capable of being used for raising any valuable plants or trees or for any other purpose of husbandry (See Sarojinidevi v. Shri Krishna Anjanneya

20 Subrahmanyam and other(1) and Megh Raj v. Allah Rakhia (2))."

For the foregoing reasons, we pass the following order:

(i) On the question of law raised, we are of the view that the Tribunal was not justified in rejecting the exemption. Accordingly, the questions of law are answered in favour of the assessees;

(ii) Consequently, the order of the Tribunal dated 11.4.2013 is set aside. In the result, both the above Tax Case (Appeals) are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

The above case law clearly supports the case of the assessee. The Hon'ble Court has held that once the factum of agricultural land is evidenced by Adangal and the letter of Tahsildar, the assessee could not be deprived-off its claim. The manner in which the adjacent lands were used would not jeopardize the claim of the assessee. The manner of usage by purchaser would also be not much material. Considering this binding decision, the claim of the assessee was to be allowed.

10. Similar is the decision of Hon'ble Calcutta High Court in the case of Borhat Tea Com. Ltd. (138 ITR 783) which, inter-alia, held that for the purpose of land being agricultural land, actual agricultural operations or cultivation or tilling of the land is not necessary. It is to be seen whether such land is capable of agricultural operations being carried on. Thus, even if the land is capable of agricultural operations, the same would retain the character of agricultural land as such. This case law further supports the case of the assessee.

11. Therefore, considering the facts and circumstances of the case, the denial of exemption on Long-Term Capital Gains, as earned by the assessee, could not be held to be justified."

8. In the light of the above judicial precedent, in the present case, there is no quarrel to the fact that the land is an agricultural land case and is not a capital asset. Subsequent conversion in character by purchaser is inconsequential because the nature of land at the time of sale is crucial. Accordingly, we hold that the learned CIT(A) was not justified in confirming the addition made by the Assessing Officer. Since the land is conclusively proved to be an agricultural land, it does not fall within the definition of *"Capital Asset"*. It is a trite law that to thrust upon the chargeability of capital gain under section 45 of the Act, transfer of capital asset is sine qua non which is conspicuously absent here. Hence the entire addition of ₹ 1,11,50,582, is directed to be deleted. Thus, the impugned order passed by the learned CIT(A) is hereby set aside and the grounds raised by the assessee are allowed.

9. In the result, assessee's appeal stands allowed.

Order pronounced in the open Court on 04/04/2025

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 04/04/2025

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.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur

		Date	Initial	
1.	Dictated on	03.04.2025		Sr.PS
2.	Draft placed before author	04.04.2025		Sr.PS
3.	Draft proposed & placed before the second member	– –		JM/AM
4.	Draft discussed / approved by Second Member	– –		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	04.04.2025		Sr.PS
6.	Date of pronouncement	04.04.2025		Sr.PS
7.	File sent to the Bench Clerk	04.04.2025		Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			