

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH, SURAT**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. No. 46/SRT/2025  
(Assessment Year: 2012-13)

Jayeshbhai Ravjibhai Patel, B-33, Patel Nagar, GNFC By-Pass Road, Zadeshwar Bharuch, Gujarat-392012	Vs.	Income Tax Officer, Ward-1(1), Bharuch (Previously ITO, Ward-1(3), Bharuch)
[PAN No. AKWPP1529M]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Hemant Suthar, C.A.
<b>Respondent by:</b>	Ms. Jayshree Thakur, Sr. DR

<b>Date of Hearing</b>	24.04.2025
<b>Date of Pronouncement</b>	28.04.2025

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short "Ld. CIT(A)"), National Faceless Appeal Centre (in short "NFAC"), Delhi vide order dated 11.01.2024 passed for A.Y. 2012-13.

2. The assessee has raised the following grounds of appeal:

"1. The Ld. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi has grossly erred in law and in facts in dismissing the appeal ex-parte without affording reasonable opportunity of being heard to the appellant. The appeal of the appellant may kindly be restored to the file of the Ld. CIT (Appeals) and may please be directed to afford reasonable opportunity of being heard.

2. The Ld. CIT (A), NFAC has erred in law and in facts in:

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(a) *confirming the action of the Ld. AO in dismissing the claim of the appellant of the sale of land at Village Zadeshwar Dist. Bharuch being that of an agricultural land which is not a capital asset in terms of Sec. 2(14). The impugned findings being bad in law and in facts is prayed to be expunged.*

(b) *confirming the action of the Ld. A.O. in holding that the capital gains on sale of land as above is liable to tax as against the claim of the appellant of it being exempt being the sale of the agricultural land [not a capital asset u/s. 2(14)] amounting to Rs. 1,56,29,930/-. The impugned addition being bad in law and in facts is prayed to be deleted.*

3. *Without prejudice to Ground No.2, the Ld. CIT(A) has erred in law and in facts in confirming the action of the Ld. A.O. making an addition to the tune of Rs.1,56,29,930/- as capital gains, considering sales consideration at Rs.3,24,53,061 in accordance with Section 50C of the IT. Act. The impugned addition of Rs.1,56,29,930/- as capital gains being bad in law and in facts is prayed to be deleted.*

4. *Without prejudice to ground no. 2 & 3, the Ld. CIT (A) has erred in law and in facts in not directing the Ld. AO to refer the matter to Departmental Valuation Officer, while rejecting the claim with respect to the value of land as on the date of sale. The action of the Ld. AO is bad in law and in facts and hence the Ld. CIT(a) ought to have directed the Ld. A.O. to allow the claim made by the appellant as per computation of income.*

5. *The Ld. CIT(A) has grossly erred in facts and in law in confirming the action of the Ld. A.O. grossly erred in adopting fair market value of land as on 01.04.1981 at Rs. 76,000/- (20\*7600/2 sq. mtr) based on the estimate made by Sub-Registrar for placed nearby area of land. The impugned estimation of cost of acquisition being bad in law and in facts is prayed to be expunged.*

6. *Without prejudice to ground no. 5, the Ld. CIT(A) has erred in law and in facts in confirming the action of the Ld. A.O. in not referring the matter to Departmental Valuation Officer, while calculating the value of land as on 01.04.1981. The action of the Ld. AO is bad in law and in facts is prayed to be expunged.*

7. *Your appellant craves liberty to add, alter, amend substitute or withdraw any of the grounds of appeal hereinabove contained."*

3. At the outset, we observe that the appeal is time barred by 292 days. The assessee filed an Affidavit for condonation of delay vide Affidavit dated 17.01.2025, wherein the assessee stated that the order of NFAC was passed an ex-parte order on 11.01.2024 on the ground that the assessee did not responded to any of the notices served by the Department. The

assessee submitted that he is an agriculturist and semi-literate and he cannot access the income tax portal and is not well-versed with the Income Tax Laws. Further, the assessee submitted that at the time of filing of return of income, the assessee provided the email address and mobile number of his consultant, however, the consultant has neither complied to the notices nor informed the assessee about the notices issued by the Department to the assessee. Thereafter, the assessee met with M/s. Mukund & Rohit, Chartered Accountants and they advised the assessee to file the appeal before the Tribunal. It was as a result of aforesaid reasons that there was a delay of 292 days in filing of the present appeal. The Counsel for the assessee submitted that there was no mala fide intention in delay in filing of the appeal before Hon'ble ITAT and hence the same may kindly be condoned.

4. Looking into the instant facts and the reasons cited by the assessee for the delay of 292 days in the filing of the present appeal, in the interest of justice, the delay in filing of the present appeal is hereby condoned.

5. On merits of the case, the brief facts are that as per information available with the Department, the Assessing Officer observed that the assessee had sold immovable property valued at Rs. 96,52,000/- along with another co-owner (brother of the assessee) during the impugned assessment year under consideration. The assessee had declared capital gain at Rs. 48,26,000/- as being exempted from taxation. During the course of assessment, the Assessing Officer observed that the assessee had produced certificate issued by Talati cum Mantri of Gram Panchayat certifying that the

land in question was situated at a distance of more than eight kilometers away from the limit of Bharuch Municipal Corporation. The said certificate was issued on 31.05.2019 by the concerned authority and it was in light of this certificate that the assessee had claimed that the agricultural land so sold was exempt from taxation. However, the Assessing Officer observed that the other co-owner of the property (being the brother of the assessee) has himself shown the said land as capital asset while filing return of income for the impugned assessment year and offered taxes on sale of this land. Further, in so far as certificate of Gram Panchayat is concerned, the Talati cum Mantri had attended the office of the Assessing Officer and filed a letter dated 20.11.2019 stating that the certificate issued by him is unauthenticated and is not valid. Accordingly, the Assessing Officer held that assessee was liable to pay capital gains tax on sale of such land, since the same was not agricultural in nature. While passing the order the Assessing Officer made the following observations:

*“12. As the assessee has failed to furnish any supporting corroborative documentary evidences in respect of his claim regarding agricultural land except filing of certificate issued by Talati cum Mantri, which had also been invalidated by Talati cum Mantri himself as discussed above, and also considering the fact that full value of consideration in the hands of the assessee as shown by him in his ROI significantly lesser than the full value of consideration as ought to have been worked out by adopting Stamp Value and also in view of the fact that the assessee's brother (one other co-owner of the land in question) shown the same land as capital asset, for the sake of natural justice, another opportunity of being heard has been provided to the assessee.*

....

*...Further, as discussed in the preceding paras, the other co-owner (brother of the assessee) of the property in question himself shown the same land as capital asset and also filed return declaring capital gain arising from the sale of land in question. Further, on perusal of valuation report of the property in question furnished by brother of the assessee, it is noticed that Register valuer has shown the land in question as “Open NA Plot”. Therefore, contention put forth by the assessee that the same land is not covered the definition of capital asset has no legs to stand.”*

6. In appeal, Ld. CIT(A) upheld the order passed by the Assessing Officer and dismissed the appeal of the assessee.

7. The assessee is in appeal before us against the aforesaid order passed by the Ld. CIT(A). Before us, the Counsel for the assessee submitted that the Ld. CIT(A) had passed ex-parte order, without giving opportunity of hearing to the assessee. The Counsel for the assessee submitted that the Ld. CIT(A) had not given adequate opportunity of hearing to the assessee and had simply confirmed the order passed by the Assessing Officer, without allowing the assessee an opportunity to present the case on merits and furnishing the supporting documents to demonstrate that the assessee is not liable to pay capital gains tax on such sale of property. The Counsel for the assessee submitted that the fact that the co-owner had declared such land as taxable cannot be a ground for holding that the assessee is also liable to pay capital gains on such sale of land. Accordingly, the Counsel for the assessee submitted that if the matter is restored to the file of Ld. CIT(A), the assessee would be in a position to demonstrate that the assessee is not liable to pay capital gains on such sale of land, being agricultural in nature.

8. On going through the facts of the instant case, and looking into the quantum of additions involved, in the interest of justice, the matter is hereby restored to the file of Ld. CIT(A) to give opportunity of hearing to the assessee, in the interest of justice. However, we note that the assessee has remained largely non-compliant in proceedings before Ld. CIT(A) and has given no cogent reason for such non-appearance / non-compliance. Accordingly, assessee is directed to pay a cost of Rs. 5,000/- to be deposited

with the Prime Minister Relief Fund for the purpose of getting the matter set-aside to the file of Ld. CIT(A). Further, we make it clear that in case there is further non-compliance on the part of the assessee before Ld. CIT(A), then Ld. CIT(A) would be at liberty to pass appropriate orders, on the basis of information available on record.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 28/04/2025**

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

Ahmedabad; Dated 28/04/2025

TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat