

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

आयकर अपील सं./ITA No.1095/SRT/2024

Assessment Year: (2012-13)

(Hybrid Hearing)

Hasmukhbhai Mangabhai Ahir, Ahir Faliyu, At & Post – Palsana, Taluka - Palsana, Surat – 394317	Vs.	The ITO, Ward –2, Bardoli
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: BRPPA3017A		
(Appellant)		(Respondent)

Appellant by	Shri Rasesh Shah, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	20/03/2025
Date of Pronouncement	05/05/2025

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 27.08.2024 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 circumstances of the case as well as law on the subject, the Ld. assessing officer has erred in re-opening the assessment u/s 147 by issuing notice u/s 148 of the I.T. Act, 1961.

2. On the facts and circumstances of the case as well as law on the subject, the Ld. CIT(A) has erred in confirming the action of assessing officer in making an addition of Rs. 8,00,000/- on account of undisclosed long term capital gain.

3. On the facts and circumstances of the case as well as law on the subject, the Ld. CIT(A) has erred in confirming the action of assessing officer in making an

addition of Rs. 8,95,900/- u/s. 50C of the Act on account of difference in Jantri value as per Stamp Duty Valuation authority and the value shown in the sale deed.

4. It is prayed that the addition made by the assessing officer and confirmed by Ld. CIT(A) may please be deleted.

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

3. Brief facts of the case are that assessee did not file his return of income for AY.2012-13. As per the information available in the office of the Assessing Officer (in short, 'AO'), assessee had sold an immovable property for Rs.8,00,000/-, but the Stamp Valuation Authority adopted fair market value of land at Rs.16,95,000/-. Thus, assessee had earned long-term capital gain (LTCG) of Rs.8,00,000/- and deemed capital gain of Rs.8,95,9000/- u/s 50C of the Act. However, he had not filed the return of income. Accordingly, notice u/s 148 was issued on 30.03.2019 after recording the reasons. The assessee did not file return in response to notice u/s 148 of the Act. Thereafter, the AO issued 4 notices fixing the date of hearing on 26.08.2019, 30.09.2019, 14.10.2019 and 22.10.2019. The assessee did not comply with the said notices. The AO, in the show cause notice dated 15.10.2019, required the assessee to explain why the assessment proceedings should not be completed u/s 144 of the Act. Again, assessee failed to comply with the notice. Accordingly, the AO completed the assessment u/s 144 r.w.s. 147 of the Act by adding Rs.8,00,000/- as undisclosed LTCG and Rs.8,95,900/- u/s 50C of the Act. Total income was determined at Rs.16,95,000/-.

4. Aggrieved by the order of AO, the assessee filed this appeal before the CIT(A). The CIT(A) issued 3 notices fixing the hearing on 22.03.2023, 14.06.2024 and 23.08.2024. He has reproduced the assessment order at pages 3 to 7 of the appellate order. He has also reproduced Statement of Facts and submission of the assessee at pages 8 to 13 of the appellate order. The decision of the CIT(A) is at para 6.1 of the appellate order. He observed that the appellant failed to provide any evidence to substantiate that the impugned land was agricultural land within the meaning of Section 2(14) of the Act. He also noted that in spite of specific opportunity granted to the assessee by the AO, the assessee failed to furnish any evidence to substantiate the claim. Hence, he was of the view that the appellant failed to discharge the onus cast upon him to prove that the land was agricultural land and it was situated outside the boundary limit specified in Section 2(14) of the Act. The CIT(A) did not allow any cost of acquisition of the land in absence of any details furnished by the assessee. In the result, all grounds and appeals were dismissed by him.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that though the notices were received by the appellant, but his tax consultant did not guide the assessee properly and collect relevant details from the assessee. He filed a general reply which was not at all relevant to the subject appeal. This is evident from the written submission filed by him before the CIT(A). He submitted that the non-compliance of the notices was not deliberate on the part of the appellant. The appellant is now ready to submit all

details and evidences in support of the grounds raised by him in the appeal before CIT(A). He requested that one more opportunity may be given to the appellant to plead his case on merit.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) of the revenue supported the order of lower authorities. He submitted that the CIT(A) has passed the order dismissing the appeal due to non-compliance by the appellant on the grounds taken up in the appeal. He would, however, have no objection if the matter is restored to file of AO.

7. We have heard both the parties and perused the material available on record. The AO made additions of Rs.16,95,900/- on account of undisclosed LTCG and difference between sale consideration and stamp valuation u/s 50C of the Act in the order u/s 144 r.w.s. 147 of the Act. The CIT(A) has dismissed appeal because the appellant did not file supporting evidence for the grounds raised in the appeal. The Id. AR submitted that the AO passed an *ex parte* order, which was confirmed by the CIT(A) in absence of details and evidences. He submitted that the non-furnishing of relevant details by the appellant was not deliberate but due to lack of guidance from his erstwhile tax consultant. The appellant is ready to submit all details in support of the grounds raised by him. He, therefore, requested that one more opportunity may be given to the appellant to plead his case on merit. Considering the facts and circumstances of the case and that the *ex parte* assessment order was confirmed by CIT(A), we are of the view that the assessee deserves one more opportunity to contest his case on merit. In the interest of justice, we set aside the order of CIT(A) and

remit the matter back to the file of AO with a direction to pass fresh order in accordance with law after granting adequate opportunity of hearing to assessee. The assessee is directed to be vigilant and to furnish all details and explanation as needed by AO by not seeking adjournment without valid reason. With this direction, the grounds of appeal raised by the assessee are treated as allowed for statistical purposes.

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

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 05/05/2025.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 05/05/2024

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

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat