



आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
AND  
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं/.ITA No.94/RJT/2024

निर्धारणवर्ष /Assessment Year: 2021-22

Deputy Commissioner of Income-tax, Central Circle-1, Rajkot, “Amruta Estate”, 2 <sup>nd</sup> Floor. M.G Road, Rajkot-360001	बनाम/ Vs.	Lajvantiben Rajabhai Hinduja, Yash Villa,54, Paras Society, Rajkot, Opp. Nirmala School Road, Near Paras Hall, Rajkot, Gujrat-360001
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: AAMPH4579H		
(अपीलार्थी /Assessee)		(प्रत्यर्थी /Respondent)

निर्धारितीकीओरसे/Assessee by : Shri R.B. Shah, Ld. AR

राजस्वकीओरसे/Revenue by : Shri Sanjay Punglia, Ld. CIT(DR)

सुनवाईकीतारीख/Date of Hearing : 03/03/2025

घोषणाकीतारीख/Date of Pronouncement : 20/05/2025

**आदेश / ORDER**

**PERDR. A. L. SAINI, AM;**

Captioned appeal filed by the Revenue, pertaining to assessment year (AY) 2021-22 is directed against the order passed by the Learned Commissioner of Income-tax (Appeals)-11, Ahmedabad [in short ‘Ld.CIT(A)/NFAC’], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’),



dated 15.12.2023, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961, vide order dated 24.12.2022.

2. The grounds of appeal raised by the Revenue are as follows:

*(1) "Whether, on the facts and in the circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition made on account of Capital gain of Rs.4,66,00,000/-with giving a reasonable opportunity to the assessing officer as per rule 46A of Income Tax Rules."*

*(2) Whether, on the facts and in the circumstances of the case and in law the Ld.CIT(A) has erred in considering the additional evidence produced by the assessee during the appellate proceedings and allowing the assessee's appeal on the basis of the same, without giving a reasonable opportunity to the assessing officer to produce to any evidence or document or any witness in rebuttal of the additional evidence produced by the assessee, despite the provisions of the Rule 46A(3) of the IT Rules."*

3. The relevant material facts, as culled out from the material on record, are as follows. The assessee had filed return of income for the year under consideration on 30.11.2021, declaring total income at Rs.4,13,610/-. The assessee has mainly shown the income from business or profession. A search and seizure action u/s 132 of the Act was carried out in "R K Group and others" on 24.08.2021, at the premises and business concerns of RK group, members and their partners. During the course of search action, at the residential premise of Shri Praful N Gangdev, incriminating documents related to the purchase/sale of two parcels of land situated at revenue survey no. 103/2 and 219 of Raiya village, Rajkot were found and seized, as page no. 34 of Annexure A/9. Accordingly, case was selected for compulsory scrutiny by issuing notice u/s 143(2) of the Act. Further, on perusal of page no. 34 of Annexure A/9, it was observed that this was signed agreement dated 02.10.2020, wherein details of property along with names of sellers and purchasers as well as cash payments involved in the said property transaction were recorded. Shri Praful Gangdev, in the statement recorded u/s.132(4) of the Act had accepted that cash had been exchanged



between parties and he being one of the partners had also admitted to had paid Rs.25 lacs. The assessing officer had further observed that in the said seized documents, that is, page no. 34, it was written that the total value of land is Rs.5,66,00,000/- and out of which Rs.25,00,000/- & Rs.75,00,000/- had been paid on 07.09.2020 & 30.09.2020 respectively. It was further observed that Rs.1,00,00,000/- was reduced which was part of one Shri Anilbhai and the rest Rs.3,66,00,000/- was to be paid by 28.02.2021, else interest @ 1.5% would be charged. The assessing officer had also stated that the assessee Smt. Lajwantiben Rajabhai Hinduja was one of the four persons who sold the property as per the seized document. Therefore, the assessing officer found that the said consideration had been paid out of books by the purchasers to the sellers against the purchase of plot which was over and above the documented price. In response to the show cause notice, the assessee had filed reply dated 22.11.2022, wherein she had claimed that the assessee had neither received cash of Rs.25,00,000/-, on 07.09.2020 nor received cash of Rs.75,00,000/-, on 30.09.2020 from the said party. The assessee had further stated that both the land bearing survey no. 103/2 & 2019 had been purchased by the assessee, on 12.04.2001 from Shri Khodabhai Jivabhai Patel for Rs.66,960/-, including stamp duty & registration charges and the same had been appearing in her balance sheet till that day. The assessee had further claimed that she had agreed to sale the same land for Rs.30,00,000/- to Shri Mukesh Wadhuram Hinduja and others on 15.04.2009 and they had paid Rs.30,00,000/-. The details of payment received by the assessee was as under:-

Name	Cheque No.	Date	Bank	Amount (in Rs.)
Mukesh Hinduja	293964	08.04.2009	HDFC Bank	Rs.12,00,000



Renuben Hinduja	079034	08.04.2009	Bank of India	Rs.12,00,000
Kantaben Hinduja	979562	15.04.2009	ICICI Bank	Rs.6,00,000/-

4. During the assessment proceedings, in response to notice under section 142(1) of the Act, the assessee had furnished the copy of acknowledgement for Rs.30,00,000/-, on stamp paper of Rs.100 dated 15.04.2009. The assessee has contended that she had agreed to sale the said land for Rs.30,00,000/- and received the money by cheques. However, due to the pending litigation under section 37(2) of the Gujarat Land Revenue Code, 1879 (Bombay Act No. V of 1879), till the date of reply, the land in question was in the name of "Shri Sarkar" , that is, in the name of the Government in the revenue records. The assessee had also attached the copy of Gam Namuno 7/12 & 8A dated 11.11.2022. She had also claimed that the said amount of Rs.30,00,000/- had been shown in her books of accounts under the head "Advance against the sale of land" from the year of receipt, that is, A.Y.2010-11 to A.Y.2021-22 and in support of her claim, she had furnished the copy of balance sheets. Moreover, Shri Mukesh Hinduja & other had also shown the said amount in their books of account as advance and for this, she had furnished the copy of contra copy of account with copy of PAN Card for ready reference. The assessee had also clarified that on perusal of said seized MOU, it was crystal clear that Shri Mukesh Hinduja was also the seller of the said land and the assessee's name was mentioned merely due to the land was in her name.

5. However, the assessing officer, rejected the above contention of the assessee and observed that the name and signature of the assessee, was present on the seized MOU. The assessing officer further stated that the assessee had furnished



the copy of receipt acknowledgement dated 15.04.2009, regarding receipt of Rs.30,00,000/-, from Shri Mukesh Hinduja on various dates but it did not conclusively proved that the assessee had transferred her ownership and was not one of the parties in sale transaction as per incriminating documents. Therefore, the assessing officer had held that as per the seized documents, the value of the said land was decided at Rs.5,66,00,000/- and out of which Rs.25,00,000/- & Rs.75,00,000/- had been paid on 07.09.2020 & 30.09.2020. Further, Rs.1,00,00,000/- was reduced which was part of one Anilbhai and the rest Rs.3,66,00,000/- was to be paid by 28.02.2021, else interest @ 1.5% would be charged. Based on the above discussed facts, substantive addition of Rs. 4,66,00,000/- was made in the hands of the assessee, to the value of sale consideration reported by the assessee, from the impugned property under the head capital gains for the year under consideration.

6. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Id. CIT(A), who has deleted the addition made by the assessing officer. The Id CIT(A) observed that assessee had constantly denied the receipt of the said cash amount of Rs.25 Lacs before the assessing officer. The assessee had claimed that the said land was agreed to be sold to Shri Mukeshbhai Hinduja & other, vide MOU dated 15.04.2009, in sale consideration of Rs.30 lacs and the said MOU was signed by both the parties that is, the assessee and Shri Mukeshbhai Hinduja on Stamp Paper of Rs.100/-. A payment of Rs.30 lacs through cheque was already received by the assessee and shown the said amount as advance in the balance sheet since 2009 because due to pending litigation under section 37(2) of the Gujarat land Revenue Code, 1879 (Bombay Act No. V of 1879). The land bearing survey no. 103/2 is still in the name of "Shri Sarkar" as on 05.12.2023. The assessee has furnished the



copy of extract in Revenue form no. 7/2 dated 05.12.2013. Further, the land bearing survey no. 219 is still in the name of "Shri Sarkar". In support of her claim, she has downloaded Gam Namuna No. 7/12 from the Gujarat Government site <https://anyror.gujarat.gov.in/Land Record Rural.aspx> on 13.12.2023. The assessee has furnished the copy of extract in Revenue form no. 7/2 dated 13.12.2013. The assessee has also explained that due to aforesaid litigation for the said land, the sale deed was not executed in favour of Shri Mukeshbhai Hinduja and other. The copy of Integrate Revenue Case Management System (IRCMS) case status in Appeal/RJT/14/2022 registration date 21.03.2022 pending with the Gujarat Revenue Tribunal in respect of R.S. No. 103/2 of Raiya Rajkot was furnished by the assessee. Based on these facts and circumstances, the learned CIT(A) deleted the addition.

7. Aggrieved by the order of the ld. CIT (A), the revenue is in appeal before us.

8. Learned DR for the Revenue, argued that page no. 34 of Annexure A/9, is signed agreement dated 02.10.2020, wherein details of property alongwith names of sellers and purchasers as well as cash payments involved in the said property transaction were recorded. Shri Praful Gangdev, in the statement recorded u/s.132(4) of the Act had accepted that cash had been exchanged between parties and he being one of the partners had also admitted to had paid Rs.25 lacs. The ld DR has also primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. Therefore, ld DR stated that based on



these incrementing material, the addition made by the assessing officer should be sustained.

9. On the other hand, Shri R.B. Shah, Learned Counsel for the assessee, pleaded that both the lands were actually not transferred by the assessee, as alleged by the assessing officer in the name of Shri Praful N. Gangdev & Others. It is also found that both the land was still in the name of 'SHREE SARKAR' that is, the title is with the Government of Gujarat. The documents and evidence submitted by the assessee, clearly shows that the alleged lands are neither transferred to Shri Praful N. Gangdev & Others nor possession of the said lands is given to them, as on date. Therefore, in absence of transfer of alleged land, no long-term capital gain (LTCG) arises in the hands of the assessee, therefore, Id. CIT(A) rightly deleted the addition.

10. We have carefully considered the facts of the case, the submission of the Learned Counsel for the assessee and Id DR for the Revenue and evidences on record. We find merit in the submissions of learned Counsel for the assessee. The assessing officer has made the addition of Rs. 4.66 crore, under the head long term capital gain, on the basis of the seized material, that is, memorandum of understanding (MOU) Dated 02/10/2020. The assessing officer opined that the assessee was agreed to sale agricultural Land of Survey No. 103/2 & 219 and the assessee had received a sum of Rs. 4.66 Crore, as advance on various dates, as noted in the seized MOU, and therefore, the assessee is liable to pay the Long-Term Capital Gain on Receipt of advance for sale of the agricultural Land. We find that both the lands were actually not transferred by the assessee, as alleged by the assessing officer in the name of Shri Praful N. Gangdev & Others. It is also found that both the lands were still in the name of 'SHREE SARKAR' that is, the title is with the Government of Gujarat. The documents



and evidence submitted by the assessee, clearly shows that the alleged lands are neither transferred to Shri Praful N. Gangdev & Others nor possession of the said lands is given to them, as on date. Therefore, in absence of transfer of alleged land, no long-term capital gain (LTCG) arises in the hands of the assessee. During the assessment proceedings, the assessee has clearly informed to the assessing officer, vide reply to the notice dated 22.11.22 that: (i) The assessee has not transferred the agricultural land, nor possession was given to anyone and both land is in dispute before government of Gujarat, (ii) 7/12 and 8A dated 11.11.2022, which is in favour of "SHRI SARKAR" was also furnished to justify that land is not transferred, (iii) The assessee has also furnished extract of 7/12 & 8 A dated 5.12.2023 and 13.12.2023 which was downloaded from the govt. web site: [www.anyror.gujarat.gov.in](http://www.anyror.gujarat.gov.in), (iv) Assessee also produced property dispute documents downloaded from Website <http://ircms.gujarat.gov.in>, (v) Both the evidence are legal documents downloaded from the govt. website and it is govt. record which needs no more investigation from part of the assessing officer, and (vi) The agricultural land is in dispute and actual sales are not executed or possession is not handed over, it cannot be treated as transfer u/s 2(14)(v) and hence no capital gain is attracted.

11. During the course of appellate proceedings, the assessee has filed written submission alongwith documentary evidences, which were already submitted before the assessing officer. The assessee has stated that she had constantly denied the receipt of the cash amount of Rs.25 Lacs before the assessing officer. The assessee had claimed that the said land was agreed to be sold to Shri Mukeshbhai Hinduja & other, vide MOU dated 15.04.2009, in sale consideration of Rs.30 lacs and the said MOU was signed by both the parties i.e. the assessee and Shri Mukeshbhai Hinduja, on Stamp Paper of Rs.100 (copy



of the said MOU was furnished by the assessee before assessing officer.). A payment of Rs.30 lacs through cheque was already received by the assessee and shown the said amount as advance in the balance sheet since 2009 because due to pending litigation under section 37(2) of the Gujarat land Revenue Code, 1879 (Bombay Act No. V of 1879).The land bearing survey no. 103/2 is still in the name of "Shri Sarkar" as on 05.12.2023. The assessee has furnished the copy of extract in Revenue,Form no. 7/2 dated 05.12.2013. Further, the land bearing survey no. 219 is still in the name of "Shri Sarkar" that is in the name of the government of Gujarat. In support of her claim, she has downloaded Gam Namuna No. 7/12 from the Gujarat Government site <https://anyror.gujarat.gov.in/Land Record Rural.aspx> on 13.12.2023. The assessee has furnished the copy of extract in Revenue,Form no. 7/2 dated 13.12.2013. The assessee has also explained that due to aforesaid litigation for the said land, the sale deed was not executed in favour of Shri Mukeshbhai Hinduja and other. The copy of Integrate Revenue Case Management System (IRCMS) case status in Appeal/RJT/14/2022 registration date 21.03.2022 pending with the Gujarat Revenue Tribunal in respect of R.S. No. 103/2 of Raiya Rajkot was also submitted by the assessee. The assessee has also stated that on account of both lands, which are in dispute, it could not be possible to clear title of the property on assessee's name. Therefore, they had mutually cancelled the deal, vide cancellation agreement dated 03.11.2020. The copy of cancellation agreement dated 03.11.2020 was furnished by the assessee. The assessee had not executed the sale deed and possession of the said property was not handed over. The property is under dispute and till now, it is held as "Shri Sarkar, so even it was not possible to sale or handover the possession. Therefore, in light of section 2(47)(v) read with section 53A of the Transfer of Property Act, the addition is not tenable. Considering these facts and circumstances, we find that learned CIT(A) has reached on right conclusion.



In the wake of above delineation, we see no error in the conclusion drawn by the CIT(A) in this regard. The CIT(A) in our view, has rightly deleted the addition. We thus decline to interfere with the conclusion so drawn by the CIT(A), and therefore ground No.1 raised by the revenue is dismissed.

12. Coming to ground No.2 raised by the revenue, which relates to additional evidences.

13. Learned DR for the revenue argued that during the appellate proceedings, some additional evidences were produced by the assessee. The Id. CIT(A) allowed the assessee's appeal on the basis of the additional evidences, without giving a reasonable opportunity to the assessing officer to produce to any evidence or document or any witness in rebuttal of the additional evidence produced by the assessee, despite the provisions of the Rule 46A(3) of the Income Tax Rules. Therefore, the matter may be remitted back to the file of the assessing officer for examination of additional evidences.

14. On the other hand, Learned Counsel for the assessee, submitted that no any additional evidences were produced during the appellate proceedings. During the appellate proceedings, the Id CIT(A), *suo-moto* accessed a public document ( land records) which was available at the public domain, for everybody, to substantiate and verify the original documents, which were already furnished before the assessing officer, by the assessee. Since, the Id. CIT(A) has co- terminus power as that of the assessing officer, therefore, in order to verify the documents already submitted before the assessing officer, the Id. CIT(A) has cross -verified the documents, by taking the evidence from the government site, that is, land records, hence, it is not an additional evidence.



15. We heard both sides in detail and also perused the records of the case including the paper book filed by the assessee. We note that Rule 46A of the Income Tax Rules, cannot whittle down or impairs the power of the Id. CIT(A) to make further enquiry under section 250 of the Income Tax Act. The examination of title of the documents of agricultural land is well within the power of Id. CIT(A) under section 250(4) of the Act. The Id. CIT(A) has verified the agricultural documents already submitted by the assessee, before the assessing officer, by obtaining more evidence from the government site ( public domain) and this action of the Ld CIT(A) cannot be said the he has admitted additional evidence. The grounds of the Department raised under Rule 46A, is not tenable in the light of the powers given by the statute to the Commissioner ( appeals) under section 250(4) of the Act. The Commissioner (appeals), may, before disposing of any appeal, make such further enquiry, as he thinks fit, for that reliance is placed on the decision of the Co-ordinate Bench of ITAT Mumbai in the case of ITO vs. Industrial Roadways (112 ITD 293) (Mumbai-Trib.) wherein it was held that:

*“the additional evidence is obtained by the first appellate authority on its own motion, there is no requirement, in law, to consult/confront the Assessing Officer with such additional evidence. There maybe cases where additional evidence is admitted by the first appellate authority on a request or application made by the assessee. In such cases sub-rule (2) of rule 46A requires the first appellate authority to allow the Assessing Officer a further opportunity to rebut the fresh evidence filed by the assessee. Even that requirement cannot be said to be a rule of universal application. If the additional evidence furnished by the assessee before the first appellate authority is in the nature of a clinching evidence leaving no further room for any doubt or controversy, in such a case no useful purpose would be served by performing the ritual of forwarding the evidence/material to the Assessing Officer to obtain his report. In such exceptional circumstances the requirement of sub-rule (3) may be dispensed with.”[para 15].Therefore, there was no infirmity in the impugned order of the Commissioner (Appals) who had taken pains to comprehensively examine the issue before him and arrive at a correct finding of fact and he should be congratulated for having done so. Therefore, his order was to be upheld and the appeals are to be dismissed.”*



16. In ITO vs. Bajoria Foundation (2001) 71 TTJ 343, the ITAT-Calcutta Bench has rejected the technical objection of the revenue and held that CIT(A) could consider the necessary evidence in exercise of his powers u/s 250(4) of the Act, if prima facie, an information is necessary to examine the claim of the assessee. Similar issue came for consideration by Hon'ble Kerala High Court in the case of CIT v. K Ravindranathan Nair 265 ITR 217 (Ker.), Hon'ble High Court held that the provisions of Sub-rule (4) of rule 46A laid down that the powers of the appellate authority under section 250 was not affected. The Hon'ble Kerala High Court further observed as follows:

*“On a consideration of the provisions of rule 46A particularly sub-rule (4) thereof and the provisions of Section 250(1) of the Income-tax Act conferring power on the Commissioner of Income-tax (Appeals), we are also of the view that in spite of the provisions of rule 46A(1), the provisions of Section 250 enable the Commissioner of Income-tax (Appeals) to accept additional evidence in appropriate cases which power has ben preserved by Sub-rule (4) of rule 46A also. If the provisions of rule 46A, Sub-rule (4) thereof, are held to be mandatory that will go against the provisions of Section 250 of the Act, conferring power on the first appellate authority to enquire into the matter and pass appropriate orders. In other words, rule 46A without Sub-rule (4) will be open to challenge as ultra vires to Section 250 of the Act.”*

17. The Hon'ble Supreme Court, in the case of Jute Corporation of India Ltd. vs. CIT 187 ITR 688 (SC) and in the case of CIT v. Nirbheram Daluram 224 ITR 610 (SC), held that the powers of the first appellate authority over an assessment are all pervasive and they are not confined to the matters considered by the assessing officer. Moreover, in the case of Sri Shankar Khandasari Sugar Mills vs. CIT (1992) 193 ITR 669, it was held that clarificatory nature of materials are not additional evidences, hence, based on these facts and circumstances and position in law, we dismiss ground No.2 raised by the revenue.



18. In the combine result, appeal filed by the Revenue is dismissed.

Order is pronounced in the open court on 20/05/2025

Sd/-

**(DINESH MOHAN SINHA)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

राजकोट/Rajkot

दिनांक/ Date: 20/05/2025

*DKP Outsourcing Sr.P.S*

आदेश की प्रतिलिपि अत्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

Sd/-

**(DR.ARJUNLALSAINI)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

By order/आदेशसे,

// True Copy //

सहायकपंजीकार

आयकरअपीलीयअधिकरण ,राजकोट