

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.769/SRT/2023**

**Assessment Year: 2013-14**

**(Physical Hearing)**

Bhanuben Ramanbhai Surati, (alias Patel), L/ h late Ramanbhai Keshavbhai Patel, H. No. 138 A/P Samarad Palsana Road, B/h Nanawadi Palsana, Surat - 394315	<b>Vs.</b>	The ITO, Ward – 1, Bardoli
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BOEPP5466A</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Sapnesh Sheth, CA
<b>Respondent by</b>	Shri Ritesh Mishra, CIT-DR
<b>Date of Hearing</b>	13/03/2025
<b>Date of Pronouncement</b>	28/05/2025

**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') by the Commissioner of Income Tax, Surat [in short, 'CIT(A)'], dated 22.09.2023 for assessment year (AY) 2013-14.

2. 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 learned Commissioner of Income-tax (Appeals), NFAC has erred in confirming the action of Assessing Office in making addition of Rs.3,71,95,880/- u/s 50C of the I.T. Act, 1961.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Office in making addition to the income of assessee under*

*the head of "capital gains" during AY 2013-14 although the land was sold by assessee during AY 2012-13 and assessee already disclosed capital gain during AY.2012-13 in the return of income as per section 2(47)(v) of the IT Act, hence, the same results into double taxation.*

*3. It is therefore prayed that the above addition made by Assessing Officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.*

*4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of appeal."*

3. The facts of the case in brief are that assessee filed its return of income for AY.2013-14 on 24.12.2013, declaring total income of Rs.1,51,050/-. The case was selected for CASS. Various notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. The Assessing Officer (in short, 'AO') observed that assessee sold an immovable property admeasuring 45936 square meters, situated at Village – Viraval, Block No.315 and 317, 317/1-A, 317/1-B, 317/1-C, 317/A-D, 317 Paiki -1, 484 and 485, Dist – Navsari vide registered sale deed on 07.11.2012 for Rs.50,52,520/-. However, verification of the sale deed revealed that stamp duty paid was Rs.20,71,100/-, which translates the fair market value of the property to Rs.4,22,48,000/-. Hence, the AO requested that assessee to show cause as to why the difference of Rs.3,71,95,880/- (4,22,48,400 – 15,52,520) should not be added to the total income u/s 50C of the Act. The assessee replied that he had sold the above agricultural land for Rs.59,09,860/- by executing a development agreement on 24.08.2011, which was notarized before Notary, Shri Suresh Dhodia, Surat. He had received Rs.35,00,000/- in FY.2011-12 (AY.2012-13) towards sale consideration of the agricultural land and hand over the possession of the said land. The assessee

has drawn attention to Clauses (4) to (13) of the development agreement, wherein it is stated that development activities was to be carried out by the buyer. He is entitled to get sale consideration of Rs.59,09,860/- and is not responsible for any expenditure incurred by the buyers. He referred to section 2(47)(v) of the Act and section 53a of the Transfer of Property Act, 1982 and submitted that capital gain is taxable in FY.2011-12 (i.e., AY.2012-13) and not AY.2013-14. He relied on the decision of Hon'ble Bombay High Court in case of Chaturbhuj Dwarkadas Kapadia vs. CIT, 260 ITR 491 (Bom.) and submitted that he has paid capital gain tax in AY.2012-13. He submitted that he had completed sale of the agricultural land by the development agreement in all respect. The subsequent registered sale agreement executed on 11.10.2012 (AY.2013-14) was for the purpose of transfer of proper legal title in the name of the buyer company. The AO examined the development agreement dated 24.08.2011 and the registered sale deed dated 07.11.2012. After examining the same, he did not find the argument of the assessee that possession of the property was handed over to the buyer, M/s Balaji Organizers Pvt. Ltd., in Fy.2011-12 (AY.2012-13). The reasons for not accepting the contention of the assessee was that the development agreement is not a registered document. It was only notarized, conveying intention of assessee to sale the property by entering into the sale agreement. The buyer gets only a right to purchase property, which cannot equated with ownership of the property. The AO further found that the main condition of handing over full possession to the buyer was full and total

payment of sale consideration to the assessee. This condition was achieved in FY. 2012-13 (AY.2013-14), which is evident from the registered sale deed mentioning that payment of Rs.15,52,520/- was made in FY.2012-13 (AY.2013-14). He also referred to condition no.2, condition no.6 and stated that the assessee would give necessary signature, consent, undertaking after receiving full sale consideration, as agreed between the parties. The assessee had submitted English translation of the registered sale deed dated 07.11.2012 from which the AO found that at page 11, it was mentioned that the appellant hand over peaceful and actual possession of the said property to the buyer on date of registration, i.e., 07.11.2012. Hence, provision of section 50C of the Act are applicable in AY.2013-14. In view of these things, the fair market value of the property was worked out at Rs.4,22,48,000/- and the difference of Rs.3,71,95,880/- was added u/s 50C of the Act. The AO has also mentioned that in view of the request of the assessee, the matter has been referred to department valuation officer for determining the fair market value of land on the date of development agreement.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The appellant has taken up various grounds including applicability of provisions of section 2(47)(v) of the Act in AY.2012-13 instead of AY.2013-14. He also raised a ground that provisions of section 50C of the Act are not applicable for AY.2013-14 because the transfer had not taken place in AY.2013-14. The CIT(A) has given the decision in pages 4 to 12 of the appellate order. He has discussed

the findings of the AO and observed that the buyer company, namely, M/s Balaji Organizers Pvt. Ltd., cannot buy agricultural land. Hence, the appellant has not entered into registered agreement and, therefore, claim of the appellant that it has transferred the immovable property u/s 2(47)(v) of the Act is not maintainable. The CIT(A) further observed that unless and otherwise the deed is registered with sub-registrar, such deed has not validity in the eyes of law. The notarized development agreement does not give rise to transfer of right in the immovable property. Further, the appellant had retained all rights including giving consent, undertaking, affixing signature and appearing before sub-register for sale or transfer of divided plots to the prospective buyers only after receiving full consideration as agreed in the development agreement. With this background, he reproduced provisions of section 50C of the Act and added the difference between the fair market stamp duty valuation with actual value of registration of Rs.3,71,95,880/- as income of the assessee. The CIT(A) has also distinguished the decisions relied upon by the assessee in the submission before him. The other grounds about non-applicability of provisions to section 2(47)(v) of the Act was also dismissed because appellant had retained all the rights and had given only development rights for the purposes of developing the immovable property. The CIT(A) also dismissed ground no.3 by stating that the buyer was a company, which was forbidden by law to enter into agreement for purchase of any agricultural land. The other grounds were also dismissed and

the CIT(A) held that there was actual transfer of land during the year under consideration, i.e., 2013-14 and AO has rightly added Rs.3,71,95,880/-.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee filed a paper book containing 88 pages including written submissions before the CIT(A), letters filed to the AO, the ledger account and payment receipt from M/s Balaji Organizers Pvt. Ltd., payment of electricity connection by M/s Balaji Organizers Pvt. Ltd., development agreement and its English translation, bank statement etc. Subsequently, the Id. AR has filed copy of the English translation of the sale deed. He has relied on the decision in cases of Chaturbhuj Dwarkadas Kapadia (supra) and Potla Nageshwara Rao vs. DCIT, 50 taxmann.com 137 (AP). The Id. AR submitted that though the registered deed was executed in AY.2013-14, the possession was given in AY.2012-13 when the development agreement with M/s Balaji Organizers Pvt. Ltd. He submitted that provisions of section 2(47)(v) of the Act is applicable in AY.2012-13 has not been given by the AO. He also submitted that all the subsequent expenses including electricity charges etc. have been borne by the buyer company. In view of these facts, the Id. AR submitted that the addition made by the AO u/s 50C of the Act is not justified.

6. On the other hand, the learned Commissioner of Income-tax – Departmental Representative (Id. CIT-DR) supported the orders of the lower authorities. He submitted that all the issues involved in the present appeal have been elaborately discussed by the AO as well as CIT(A). He submitted that the

decisions relied upon by the Id. AR has been correctly distinguished by the CIT(A). He also submitted that the buyer was a private company, and it was not eligible to buy agricultural land in AY.2012-13. Only after conversion of agricultural land for non-agricultural purposes, the actual sale deed was executed in AY.2013-14. Hence, the AO has rightly applied provisions of section 2(47)(v) and section 50C of the Act in AY.2013-14 and added the impugned amount of Rs.3,71,95,880/- u/s 50C of the Act.

7. We have heard both parties and perused the materials available on record. We have also deliberated the decisions relied upon by the parties. Ground Nos. 1 and 2 are inter-related and hence discussed and decided herein below. The issue for consideration is whether there was actual transfer of the immovable asset in AY.2012-13 when the development agreement was entered into by the assessee and M/s Balaji Organizers Pvt. Ltd., or when the sale deed was executed in AY.2013-14. The development agreement was entered into on 24.08.2011 (AY.2012-13) and the sale deed was executed on 07.11.2012 (AY.2013-14). It was found from the facts on record that the sale consideration as per the development agreement was Rs.59,09,860/- out of which assessee had received only Rs.35,00,000/- in AY.2012-13. The assessee received Rs.15,52,520/- on 01.09.2012 and 03.09.2012 in AY.2013-14. Thus, the full consideration was received only in AY.2013-14. It is also mentioned at page 11 of the sale deed that the possession was given today (date of registration), i.e., on 07.11.2012. For ready reference, it was stated as follows:

*“The second part has handed over peaceful and actual possession of said property to the first part on today. There is no any easement right of anybody.”*

It is, therefore, clear that the actual possession of the property was handed over to the buyer on 07.11.2012, i.e., AY.2013-14. The other clauses discussed above also specifically mentioned that the appellant had retained all the rights including giving consent, undertaking, affixing signature and appearing before the sub-registrar for sale or transfer of divided plots to the prospective buyer only after receiving full consideration as agreed upon. Therefore, till the appellant received the full consideration as on date of registration, i.e., on 07.11.2012, the appellant had not given all the rights to the buyer, and he had retained rights over the property.

7.1 We also agree with the view of the CIT(A) that non-agriculturist cannot buy agricultural land. According to the State of Gujarat, only agriculturist can buy agricultural land. If any other person wishes to buy agricultural land for commercial purposes, he must first get the required permission from the District Collector. There are specific rules and conditions outlined in section 63 of the Bombay Tenancy and Agricultural Lands Act to obtain necessary permission from the competent authority, including the District Collector. In the present case, the appellant had not got the necessary permission for converting the agricultural land into non-agricultural purposes. Therefore, buyer, i.e., M/s Balaji Organizers Pvt. Ltd., could not have purchased agricultural land in AY.2012-13. Hence, actual transfer took place with effect from 07.11.2012 (AY.2013-14).

7.2 The Id. AR has relied on the decision in case of Chaturbhuj Dwarkadas Kapadia (supra) and Potla Nageshwara Rao (supra). We find that in case of Polta Nageshwara Rao (supra), the transfer of capital asset was completed and only the sale consideration was deferred till other assessment years. However, in the present case, the transfer of capital asset itself was completed only after receipt of the full sale consideration in AY.2013-14. Therefore, the facts are distinguished.

7.3 As regards in the case of Chaturbhuj Dwarkadas Kapadia (supra), it may be stated that the Hon'ble jurisdictional High Court in case of Ushaben Jayantilal Sodhan, (2018) 407 ITR 276 (Guj.) has considered a series of decision including the above decision, both in favour of revenue and decision against the assessee and held that the term "transfer" defined u/s 2(47) of the Act has a much wider connotation compared to the common parlance understanding or even under the Transfer of Property Act, 1882 under which the term "transfer of property", has a narrower sweep. The agreement to sell an immovable property is in the nature of a bilateral contract between the seller and the buyer. Under such agreement, the seller agrees to transfer the title in the property to the buyer, upon the buyer performing his part of the obligations, mainly, revolving around the payment of sale consideration on agreed terms. Such agreement to sell, however, has to culminate into a registered sale deed, so as to transfer the title of property from the seller to the buyer. An agreement to sell immovable property does not cast obligations only on the seller. It is based on reciprocal

promises to be performed by both sides. If the purchaser fails to discharge his obligations arising out of the contract, the agreement may well not culminate in a final sale deed. Therefore, to hold that upon mere execution of an agreement to sell the immovable property itself gets transferred to the purchaser, even within the extended definition of section 2(47) of the Act, would be incorrect.

7.4 The Hon'ble Gujarat High Court has considered a number of decisions including decisions in cases of Chaturbhuj Dwarkadas Kapadia (supra), CIT vs. Atam Prakash & sons, (2008) 175 Taxman 499 (Delhi), Ratna Trayi Reality Services Pvt. Ltd. vs. ITO, 356 ITR 493 (Guj.), Rustom Spinners Ltd. vs. CIT, (1992) 198 ITR 351 (Guj.), Sanjeev Lal vs. CIT, (2004) 365 ITR 289 (SC) and Suraj lamp and Industries P. Ltd. vs. State of Haryana, (2012) 340 ITR 1 (SC) etc. and held as above. The relevant part of the finding is as under:

*"16. We must, however, view these transactions in the context of the provisions contained in the Act instead of confining its effect to the Transfer of Property Act and the Registration Act. As noted, section 2(14) of the Act defines "capital asset", inter alia, as a property of any kind held by an assessee. Section 2(47) of the Act defines "transfer" in relation to a capital asset to include sale, exchange or relinquishment of the asset or extinguishment of any rights therein. The term "transfer" defined under section 2(47) of the Act, thus, has a much wider connotation, as compared to the common parlance understanding or even under the Transfer of Property Act, under which the term "transfer of property", as noted earlier, has a narrower sweep. It is, perhaps, possible to argue that the agreement to sell gives rise to a capital asset. Upon execution of the agreement to sell, the intending purchaser gets a certain right to insist that the title of the property be transferred if he performs his part of the obligation arising out of the agreement. If the seller is unwilling to do so, the intending purchaser may also successfully bring a suit for specific performance by demonstrating that he was and had always been ready and willing to perform his part of the obligations arising out of the agreement. Under an agreement to sell, thus, the seller binds himself to do or not to do certain things in reciprocation of the purchaser performing his part of the obligations. Correspondingly, it may be stated that the seller's right to freely deal in the property in question gets curtailed. It may, therefore, also be possible to argue*

*that upon execution of such an agreement, there was extinguishment of certain rights of the owner and to that extent, there was a transfer of capital asset. The crucial question, however, still begs the answer is can it be stated that the agreement to sell transfers the property in question within the meaning section 2(47) of the Act?*

*17. In our opinion, the answer has to be in the negative. As discussed earlier, the agreement to sell an immovable property is in the nature of bilateral contract between the seller and the buyer. Under such agreement, the seller agrees to transfer the title in the property to the buyer, upon the buyer performing his part of the obligations, mainly, revolving around the payment of sale consideration on agreed terms. Such agreement to sell, however, has to culminate into a registered sale deed, so as to transfer the title of property in question from the seller to the buyer. There may be multiple reasons why such eventuality may never arise and these reasons could be entirely different from the seller refusing to perform his part of the obligations arising out of the contract or for some such reason, the transaction running into legal controversies. Some of the imaginable reasons could be the inability of the seller to clear the title of the property due to which the contract may be frustrated or rescinded with mutual consent or the refusal or inability of the purchaser to pay the sale consideration.*

*18. An agreement to sell immovable property does not cast obligations only on the seller. It is based on reciprocal promises to be performed by both sides. If the purchaser fails to discharge his obligations arising out of the contract, then the agreement may as well not culminate into a final sale deed. Depending on the terms of agreement, the seller may either forfeit the earnest money, rescind the contract or in a given case, sue for specific performance or damages. These are but, a few illustrative examples to appreciate that there can be a wide gap between an agreement to sell and an actual instance of sale being evidenced under a sale deed. To therefore hold that upon mere execution of an agreement to sell of the immovable property itself gets transferred into the purchaser, even within the extended definition of section 2(47) of the Act, would be incorrect."*

8. In view of the facts discussed above and the decisions of the Hon'ble jurisdictional High Court in case of Ushaben Jayantilal Sodhan (supra), we are of the considered view that the impugned property was transferred u/s 2(47)(v) of the Act in AY.2013-14 and not in AY.2012-13. The AO has also rightly applied provisions of section 50C of the Act because the fair market value as per the

stamp valuation authority was Rs.4,22,400/- as against Rs.50,52,520/- considered by the appellant. Hence, ground Nos. 1 and 2 are dismissed.

8.1 However, the AO is directed to allow credit of the taxes paid by the appellant in earlier AY.2012-13.

9. Ground Nos.3 and 4 are general in nature and do not require adjudication.

10. In the result, the appeal of the assessee is partly allowed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 28/05/2025.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

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

Surat

दिनांक/ Date: 28/05/2025

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A) / PCIT
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**// TRUE COPY //**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat