

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI T. R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.337/SRT/2024

Assessment Year: (2014-15)

(Hybrid Hearing)

Ibrahim Yakub Doba, 11, Mayat Faliya, Kathor, Surat – 394150	Vs.	The ITO, Ward - 2(2)(2), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: BBVPD5652A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी /Respondent)

Appellant by	Shri P. M. Jagasheth, CA
Respondent by	Ms. Neerja Sharma, Sr. DR
Date of Hearing	06/05/2025
Date of Pronouncement	02/06/2025

आदेश / O R D E R

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 02.02.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2014-15.

2. Grounds of appeal raised by the assessee are as under:

"1. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.41,00,208/-on account of alleged difference in value adopted by the assessee and market value of the property as per stamp duty valuation and u/s.56(2)(vii)(b) of the Income Tax Act, 1961.

2. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.49,79,200/- on account of not allowing exemption claimed of

Rs.76,64,867/-u/s.54B of the Income Tax Act, 1961 and exemption u/s.54B is restricted to Rs.26,85,667/- only.

3. On the facts and in the circumstances of the case as well as the law on the subject, the learned Assessing Officer has erred in making addition of Rs.76,64,867/- on account of alleged long term capital gain worked out on sale of agriculture land without taking indexed cost of acquisition and Deduction claimed u/s.54B of the Income Tax Act, 1961.

4. It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.

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

3. The facts of the case in brief are that the assessee filed returned of income for AY.2014-15 on 28.03.2016, declaring total income of Rs.1,99,430/- and agricultural income of Rs.2,55,071/-. The case was selected for scrutiny and various statutory notices and show cause notice were issued by the Assessing Officer (in short, 'AO'). The AO found that assessee had sold an immovable property for total consideration of Rs.1,45,59,600/- in which the share of the assessee was Rs.76,64,867/-. The assessee had computed long-term capital gain (LTCG) on sale of above property and claimed deduction u/s 54B of the Act. However, the AO found that the purchase considerations of Rs.26,85,667/- paid by the assessee were less than the stamp duty valuation of Rs.67,85,875/-. Though the assessee had claimed deduction u/s 54B of the Act, he had not declared any income u/s 56(2)(vii)(b) of the Act. The AO accordingly added the difference of Rs.41,00,208/- u/s 56(2)(vii)(b) of the Act, since the assessee did not file any compliance to the show cause notice. The AO also

added LTCG of Rs.76,64,867/- without allowing any deduction u/s 54B of the Act. Total income was determined at Rs.1,19,64,510/-.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A), who has allowed deduction u/s 54B of the Act to extent of Rs.26,85,667/- being the actual purchase consideration paid by the assessee. He, however, upheld the addition of Rs.41,00,208/- u/s 56(2)(vii)(b) of the Act.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. At the outset, the learned Authorized Representative (Id. AR) of the assessee has requested to admit the following additional grounds of appeal:

“1. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax (Appeals) as well as the Learned Assessing Officer has erred in not referring to the DVO for determining the cost of acquisition as on 01.04.1981.

2. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax (Appeals) as well as the Learned Assessing Officer has erred in not referring to the DVO for determining fair market value of agriculture land purchase u/s 56(2)(vii)(b) of the Income Tax Act, 1961.”

6. The Id. AR of the assessee stated that assessee had objected to the valuation of the purchase price of the two lands at Rs.26,85,667/-. He had requested the CIT(A) to refer the matter for valuation to the Valuation Officer, which was not accepted by the CIT(A). The reasons for such rejection have also not been given in the appellate order. The Id. AR has drawn attention to the paper book filed by him that the request for reference to the DVO is mentioned at page 6, 7 and 8 of the paper book. He, therefore, requested that

the matter may be set aside for referring the matter to DVO and to pass order thereafter in accordance with law.

7. On the issue of additional ground, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue stated that the issue was not raised before the AO or CIT(A).

8. We have heard both parties and perused the materials available on record. In the paper book, the appellant has filed copies of assessee's written submission to the CIT(A), separate request to CIT(A) for reference to DVO and copy of e-proceedings response acknowledgment wherein such request was made. It is seen from the submission made by the appellant before the CIT(A) that he had requested to refer the subject matter to the DVO as appellant was not given opportunity for referring the matter to DVO. This is at page 6 of the paper book. Again, at page 7 of the paper book, the appellant had specifically requested the CIT(A)-1, Surat to refer the matter to DVO. It is also seen from the e-proceedings response acknowledgement that though request was made to refer valuation to the DVO, but no reference was made to DVO. It is, therefore, clear that the assessee had requested the CIT(A) several times to refer the matter for valuation to the DVO, however, the same has not been referred to. All these facts are available on record and no new fact has been brought by the appellant in respect of the additional grounds raised before the Tribunal. The Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT, 229 ITR 383 (SC) held that there was no reason why assessee

should be prevented from raising a question before the Tribunal for the first time, so long as the relevant facts are on record. There is no reason to restrict the power of Tribunal u/s 254 only to decide the ground which arise from the order of CIT(A). In view of the above facts and the decision of Hon'ble Supreme Court cited supra, the additional ground is admitted and the order of CIT(A) is set aside. The matter is restored to the file of AO with direction to refer valuation of the property to the Valuation Officer and thereafter pass fresh assessment order after giving reasonable opportunity of hearing to the assessee. The ground is allowed for statistical purpose.

9. We make it clear that no opinion has been expressed by us in respect of deduction u/s 54B of the Act.

10. In the result, appeal of the assessee is allowed for statistical purpose.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 02/06/2025.

Sd/-
(T. R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 02/06/2025

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat