

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA**

**BEFORE
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.50/AGR/2025
(ASSESSMENT YEAR: 2015-16)

ITA No.52/AGR/2025
(ASSESSMENT YEAR: 2015-16)

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| ACIT, Circle 2(1)(1), | Vs. | Ashok Kumar Agarwal 6/26, Barah Bhai Ki Gali, Belanganj, Agra-282002 Uttar Pradesh. PAN-ABIPA7741F |
| (Appellant) | | (Respondent) |

| | |
|-----------------------|------------------------------------|
| Assessee by | None, adjournment rejected |
| Department by | Shri Shailendra Srivastava, Sr. DR |
| Date of Hearing | 19/05/2025 |
| Date of Pronouncement | 24/06/2025 |

ORDER

PER MANISH AGARWAL, AM:

These two appeals are filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A) in short] dated 14.11.2024 in Appeal No. CIT(Appeals)-2, Agra/10010/2018-19 and in Appeal No. CIT(Appeals)-2, Agra/10098/2019-20 both for Asst.

Year 2015-16 passed u/s 250 of the Income Tax Act, 1961 ('the Act' in short).

2. Brief facts of the case are that assessee is an individual and filed his return of income on 29.09.2015 declaring total income at Rs.18,35,16,990/- which was revised on 31.10.2015 at the same income. The case was selected for limited scrutiny to examine the long term capital gain earned during under appeal. The assessee has sold a piece of land to M/s Maruti Suzuki India Ltd. for total consideration of Rs.27,04,49,066/-. Such land was inherited by assessee from his father who purchase the same on 25.03.1965. For the purposes of determination of Fair Market Value (FMV) as on 01.04.1981, assessee filed copy of valuation report obtained from approved valuer wherein the same was valued at Rs. 71,74,723/-. The assessee after claiming the deduction for indexed costs of acquisition declared the remaining amount as long term capital gain. The AO did not accept the valuation report submitted by the assessee with regard to the FMV as on 01.04.2018 and made a reference u/s 142A to the DVO for valuation of FMV of the land sold by the assessee as on 01.04.1981 who valued the same at Rs.2,27,900/- as against Rs.71,14,423/- valued by the approved valuer. Accordingly, the long term capital gain was computed at Rs.26,47,47,255/- as against 19,01,49,859/- declared by the assessee. The AO also disallowed the claim of expenditure of Rs.34,65,000/- made by the assessee for removal of encumbrance over the land by illegal occupants. The Ld.

CIT(A) in first appeal has allowed the appeal of the assessee, therefore, the Revenue is in appeal before us.

3. None appeared on behalf of the assessee. An adjournment application was filed which was dismissed.

4. Ld. CIT-DR supported the order of the AO and submitted that the assessee has taken FMV as on 01.04.1981 by treating the land as industrial urban plot whereas the land was agricultural as on 01.04.1981. He further submitted that the land use of subject land was converted just immediately before the sale of the land on the request of the buyer and, therefore, it cannot be said that the land was an industrial urban land as on 01.04.1981. He further submitted that during the course of appellate proceedings, the Ld. CIT(A) has considered certain notifications issued by the Govt. of UP to hold that the land was an urban land. The Ld. CIT-DR further submitted that these evidences were never confronted with the Assessing Officer. He further submitted that for the purposes of determination of FMV as on 01.04.1981 what is to be seen is the nature of the asset as on 01.04.1981. The DVO in its report has made categorical finding that the land in question was agricultural land. He, thus, prayed that the order of AO deserves to be restored.

4. We have heard the rival submissions and perused the materials available on record. In the instant case, the sole issue of dispute that is whether the land sold by the assessee during the year under appeal was agricultural land as on 01.04.1981 or not. For the purpose of

computing the capital gains from the sale of capital asset i.e. land in the present case, where the land is acquired by the assessee prior to 01.04.1981, the FMV as on 01.04.1981 is to be taken the cost for the purpose of indexation. In this case, the claim of the assessee is that the land in question was urban land as on 1.4.1981. He obtained the valuation report of the registered valuer who valued the same at Rs.71,14,423/- which is based on the circle rate of Hari Parvat Road, City Agra being the highest circle rate of none agricultural land in that area. As against this, the DVO observed that the land as on 01.104.1981 was agricultural land and, therefore, the FMV the land should be valued that an asset would ordinary fetch in open market as on 01.04.1981 if the same was sold and accordingly valued the same at Rs. 2,27,900/-. We find force in the argument of the DVO because what is to be determined is the FMV of the subject land as on 01.04.1981 and not at the time when the land is sold i.e. character of the land is to be seen as at 01.04.1981. As observed above, the land of the assessee was converted from agricultural land to industrial purposes only in the year of sale that too on the behest of the buyer. Otherwise, the land use was agricultural land till such date. Therefore, it cannot be said that the land is an urban land or industrial land. Further, the Approved valuer has taken the circle rate of Hari Parvat area which is far from the area where the land is situated. Under these circumstances, we find that Ld. CIT(A) has not correct in accepting the valuation made by the assessee based on the approved valuer's report. We thus, set aside the order of the Ld. CIT(A) in this regard and restore the valuation done by the DVO of

the FMV of land as on 01.04.1981 at Rs. 2,27,900/- and direct the AO to recompute the capital gain after allowing the benefit of indexation to the assessee on the FMV assessed by the DVO. The grounds of appeal No.1 to 4 of the Revenue are allowed.

5. Ground No.5 of the Revenue is with respect to the deletion of addition of Rs.34,65,000/- claimed by the assessee for removal of encumbrance on the subject land. From the perusal of the order of the Ld. CIT(A), it is seen that Ld. CIT(A) has allowed the claim of deduction without having any verification of the evidences placed on record by the assessee. Therefore, we set aside this issue to the file of the AO with a direction to make necessary verification of the claim, after examining the details and evidence filed by the assessee in this regard. The assessee is also directed to file all the necessary evidence in respect to the claim of Rs.34,65,000/- made in this regard. Ground of appeal No. 5 of the Revenue is partly allowed for statistical purposes.

6. In the result, appeal of the Revenue is partly allowed.

ITA No.52/Del/2025

7. In this appeal, the Revenue has challenged the deletion of penalty of Rs.7,45,97,396/- levied u/s 271(1) (c) of the Act. The Ld. CIT(A) has deleted the penalty levied by the AO u/s 271(1)(c) for the sole reason that the appeal of the assessee in quantum was allowed and additions were deleted. Since, we have partly allowed the appeal of the Revenue in ITA No.50/Agr/2025 as arising out of the

assessment order passed u/s 143(3) dated 28.02.2018, and directed the AO to re-compute the long terms capital gains from the sale of land by taking the fair market value as determined by DVO as on 1.4.1981. Further claim of expenses out of the sale proceeds is also sent back to the file of the Ld. AO for fresh verification.

As no arguments was made on behalf of the assessee and also in view of the facts as narrated above, we set aside the order of the Ld. CIT(A) in deleting the penalty levied by AO u/s 271(1)(c) and restore back the matter back to the file of the AO with the directions to pass penalty order afresh considering the income finally determined after giving effect to the order of Tribunal in ITA No. 50/Agr/2025. With these directions, the appeal of the Revenue is partly allowed for statistical purposes.

8. In the result, ITA No.50/Agr/2025 is partly allowed and ITA No.52/Agr/2025 is allowed for statistical purposes.

Order pronounced in the open court on 24.06.2025.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 24.06.2025

PK/Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR