

**IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT
(HYBRID HEARING)**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. Nos. 149 to 151/SRT/2025
(Assessment Years: 2011-12 to 2013-14)

Vinodchandra Madhabhai Lavri (Individual), 14, Amul Ind. Society, Nr. Shree Ram Marble, Bhatar, Surat-395002	Vs.	Income Tax Officer, Ward-2(3)(4), Surat
[PAN No.AACPL8136C]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Rasesh Shah, C.A.
Respondent by:	Shri Ashish Pophare, CIT DR

Date of Hearing	03.07.2025
Date of Pronouncement	07.07.2025

O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

These three appeals are filed by the assessee as against separate ex-parte appellate orders all dated 16.12.2024 passed by Ld. Commissioner of Income Tax (Appeals) (hereinafter referred to as "Ld. CIT(A)"), National Faceless Appeal Centre, Delhi arising out of the ex-parte re-assessment orders passed under Section 147 r.w.s. 144 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relating to the Assessment Years 2011-12 to 2013-14. Since common issues are involved in all the appeals, the same are disposed of by this common order.

2. ITA No. 149/Srt/2025 is taken as the lead case relating to the A.Y. 2011-12. Brief facts of the case is that the assessee is an

individual who has filed original Return of Income for the A.Y. 2011-12 on 30.03.2012 declaring total income of Rs. 2,20,350/-. The return was processed under Section 143(1) of the Act and accepted the returned of income. The return was reopened based on the information during the course of search action in the case of Shri Dilipbhai Chhaganbhai Sojitra on 18.02.2014 that on-money transaction on sale of land owned by the assessee. Further, the assessee has not shown the LTCG on the transfer of capital assets relating to the assessment year. Thus, there is escapement of income chargeable to tax to the extent of Rs. 20,58,43,869/- in the case of the assessee for the following three assessment years:

<i>A.Ys</i>	<i>Amount [Rs.]</i>
<i>2011-12</i>	<i>9,47,00,000/-</i>
<i>2012-13</i>	<i>6,89,10,000/-</i>
<i>2013-14</i>	<i>4,22,33,869/-</i>
<i>Total</i>	<i>20,58,43,869/-</i>

2.1 Therefore notice under Section 148 was issued on the assessee. In response the assessee filed his Return of Income on 24.09.2018 showing total income of Rs. 2,20,350/- and agricultural income of Rs. 2,93,000/- and requested for a copy of the reason recorded for reopening of assessment. Thereafter, the Assessing Officer issued notice under Section 143(2) calling for details in respect of computation of Long Term Capital Gain on sale of immovable property. Since the assessee has not replied to the notices, a final show-cause notice was issued that was also not replied by the assessee, which has resulted in passing the ex-

parte assessment order and making addition of Rs. 11,28,09,250/-.

3. Aggrieved against the ex-parte assessment order, assessee filed appeal before CIT(A). The Ld. CIT(A) granted three opportunities of hearing on 01.05.2024, 22.07.2024 and 01.10.2024. However, the assessee has not complied to the notices thereby CIT(A) dismissed the appeal for non-prosecution and without passing order on merits of the case.

4. Aggrieved against the ex-parte appellate orders, the assessee is in appeal before us raising the following grounds of appeal:

“1. On facts and circumstances of the case and in law, the learned CIT(A), NFAC has grossly erred in confirming the re-opening of the case of the appellant for the year under consideration by issuing notice u/s. 148 of the Act, which is absolutely illegal and bad-in-law, requiring outright annulment.

2. On facts and circumstances of the case and in law, the learned CIT(A), NFAC has grossly erred in passing the impugned order on an Ex-parte basis, without providing proper opportunity of being heard to the appellant. Therefore, the impugned additions as confirmed by the learned CIT(A), NFAC are erroneous and needs to be deleted in the interest of natural justice and equity.

3. Without prejudice to the aforesaid ground of appeal no. 1 & 2, even otherwise on facts and circumstances of the case and in law, on facts and circumstances of the case and in law, the learned CIT(A), NFAC has grossly erred in confirming the application of presumption u/s. 132(4A) and section 292C in the case of the appellant for confirming addition of Rs. 9,47,00,000/- in respect of alleged receipt of on-money on sale of agricultural land, without appreciating that the said presumption is available only in the case of a person from whose possession and control the documents are found and is not at all available in respect of the documents found and seized from a third party, wherein there is no statement of the third party against the appellant and there is also no corroborative evidence to support such presumption.

Hence, the impugned additions as confirmed in the subject order only on presumptions and assumptions needs to be deleted as being erroneous and bad-in-law.

4. Without prejudice to the aforesaid ground of appeal no. 1, 2 & 3, even otherwise on facts and circumstances of the case and in law, on facts and circumstances of the case and in law, the learned CIT(A), NFAC has erred in confirming the addition of Rs. 9,47,00,000/- on an ex-parte basis alleging on-money receipts in cash on sale of agricultural land by treating the same as undisclosed income of the appellant on the basis of a seized documents found from a third party –

- By first of all, relying on the seized documents, which is neither containing the signature nor the handwriting of the appellant;
- Secondly, by ignoring the fact that there is no statement of either the third party or the purchaser of the subject land against the appellant;
- Thirdly, by not having any corroborative evidences whatsoever showing that the appellant has received any payment in cash; and
- Lastly, by not affording the appellant an opportunity of cross examination of the persons whose statement has been relied upon by the learned ITO for making the impugned addition.

And hence, the impugned addition of Rs. 9,47,00,000/- as confirmed by the learned CIT(A), NFAC on an ex-parte basis alleging on-money receipts in cash on sale of agricultural land, by treating the same as undisclosed income of the appellant, which needs to be deleted as being absolutely erroneous, illegal and bad-in-law.

5. Without prejudice to the aforesaid ground of appeal no. 3 & 4, even otherwise on facts and circumstances of the case and in law, the learned CIT(A), NFAC has grossly erred in confirming the order of the learned ITO, without appreciating the fact that the corresponding addition in the case of Mr. Ramesh Bhadani who has alleged to have made unaccounted payment to the appellant has been deleted by the higher appellate authorities, and accordingly, as a natural corollary thereto, even in the case of the appellant no addition can be made in respect thereof alleging unaccounted receipts and hence, the impugned addition as confirmed by the learned CIT(A), NFAC may kindly be shunned out rightly as being covered matter.

6. Without prejudice to the aforesaid ground of appeal no. 1 & 2, even otherwise on facts and circumstances of the case and in law, the learned CIT(A), NFAC has grossly erred in confirming the addition of Rs. 1,78,88,903/- alleging undisclosed long term capital gain income of the appellant, on sale of agricultural land by not allowing the appellant his claim –

- For transfer expenses of Rs. 5,40,000/- incurred on sale of the subject agricultural land, and
- For deduction u/s. 54B of the Act to the tune of Rs. 1,73,48,903/- by making investment in other agricultural land;

from the long term capital gain income earned by the appellant on sale of agricultural land.

Hence, the aforesaid action of the learned CIT(A), NFAC in confirming the action of the learned ITO is absolutely erroneous and incorrect and the claim for transfer expenses and deduction u/s. 54B, as made by the appellant in his return of income itself, may kindly be allowed in the interest of natural justice & equity.

7. The appellant craves leave to add, amend, alter, substitute, modify in any or all the above grounds of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.

All the aforesaid grounds of appeal are independent and without prejudice to each other, requiring separate adjudication.”

5. Ld. Counsel Shri Rasesh Shah appearing for the assessee submitted that the assessee sought for adjournment on the hearing on 02.10.2024 on the ground that the Chartered Accountant is pre-occupied with the Tax Audit Report and filing of Income Tax Return and requested to re-fix the hearing of the appeals in the month of November 2024. Ld. Counsel also produced before us, copy of the hearing notice issued by Ld. CIT(A) and the adjournment request filed by the assessee, with e-acknowledgement.

6. Per contra, Ld. D.R. appearing for the Revenue could not dispute the above facts. Since the re-assessment orders itself being an ex-parte order and the Ld. CIT(A) without considering the adjournment request made by the assessee. Therefore, in the interest of principle of natural justice, we deem it fit to set-aside the matter back to the file of Jurisdictional Assessing Officer to decide the case on merits by giving proper opportunity of hearing to the assessee. Needless to state that the assessee should

cooperate by furnishing all required details and documents before the Jurisdictional Assessing Officer for passing orders on merits.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

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8. There is no change in facts of the case for the Assessment Years 2012-13 & 2013-14. Therefore, in the absence of any changed circumstances the decision rendered in ITA No. 149/Srt/2025 and the same shall apply mutatis mutandis. Hence, these two appeals filed by the assessee are allowed for statistical purposes.

9. In the combined result, all the appeals filed by the assessee are allowed for statistical purposes.

**Order pronounced under proviso to Rule 34 of ITAT Rules, 1963
on 07/07/2025**

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

Ahmedabad; Dated 07/07/2025

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat