

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 Nos.39/RJT/2025

(निर्धारणवर्ष / Assessment Years: (2014-15))

Kantaben Ramniklal Nagda Flat No. 603, K D Tower, Oswal Colony, Jamnagar-361004	Vs.	ITO, Wd- 2(6), Jamnagar Aayakar Bhavan, Nr. Subhash Bridge, Jamnagar Rajkot Highway, Jamnagar - 361001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGTPN7366D		
(Assessee)		(Respondent)

आयकरअपीलसं./ITA Nos. 46/RJT/2025

(निर्धारणवर्ष / Assessment Years: (2014-15))

JiteshbhaiRamniklalNagada Flat No. 603, K D Tower, Oswal Colony, Jamnagar-361004	Vs.	ITO, Wd- 2(6), Jamnagar Aayakar Bhavan, Nr. Subhash Bridge, Jamnagar Rajkot Highway, Jamnagar - 361001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGCPN9158N		
(Assessee)		(Respondent)

Assessee by : Shri Dushyant Maharshi, Ld. AR

Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

Date of Hearing : 23/06/2025

Date of Pronouncement : 10/09/2025

आदेश / ORDER

Per, Dr. Arjul Lal Saini, AM:

Captioned two appeals filed by the different assessees, pertaining to same Assessment Years 2014-15, are directed against the separate orders passed by the Learned Commissioner of Income Tax(Appeals),which in turn, arise out of separate assessment orders passed by the Assessing Officer,



under Section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'].

2. Since common and identical issues are involved, therefore, these two appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. The grounds of appeal raised by the assessee, in ITA No. 39/Rjt/2025, for Assessment Year 2014-15, are as follows:

1. *“Hon'ble CIT (Appeals) erred in law by confirming addition made by Ld. A.O. of Rs. 8,34,694/- u/s. 56(vii)(b)(ii) without considering the fact that the land purchased is Rural Agricultural Land which is not capital asset as per provisions of section 2(14). Hence, Section 56(vii)(b)(vii) is not applicable.*
2. *Hon'ble CIT (Appeals) erred in law by confirming addition made by Ld. A.O. of Rs. 8,34,694/- u/s. 56(vii)(b)(ii) on account of alleged difference between actual purchase price and Jantri Value without establishing that purchase is made by appellant by payment of extra money neither by referring the same to valuation officer for evaluation of the value.*
3. *Hon'ble CIT (Appeals) erred in law by confirming addition made for Long Term Capital Gain of Rs. 16,80,923/- by Ld. AO by denying the cost of improvement for want of necessary supporting documents.*
4. *Hon'ble CIT (Appeals) erred in law by confirming addition u/s 50C for substituting Jantri value of assets which is higher than actual sale price without considering the fact that the land is not a capital asset. Hence, provisions of section 50C is not applicable.*
5. *Hon'ble CIT (Appeals) erred in law as well as fact by confirming by making addition of Rs.2,33,385/- u/s 68 for agricultural income disclosed by appellant for want of supporting documents.*
6. *Hon'ble CIT (Appeals) erred in law as well as fact by confirming addition of Rs. 24,48,100/- for opening balance of cash for want of source and treating the same as undisclosed sources.”*

4. The grounds of appeal raised by the assessee, in ITA No. 46/Rjt/2025, for Assessment Year 2014-15, are as follows:

1. *Hon'ble CIT (Appeals) erred in law by confirming addition made by Ld A.O. of Rs. 8,34,694/- u/s 56(vii)(b)(ii) without considering the fact that the land*



purchased is Rural Agricultural Land which is not capital asset as per provisions of section 2(14). Hence, Section 56(vii)(b)(vii) is not applicable.

2. Hon'ble CIT (Appeals) erred in law by confirming addition made by Ld A.O. of Rs. 8,34,694/- u/s. 56(vii)(b)(i) on account of alleged difference between actual purchase price and Jantri Value without establishing that purchase is made by appellant by payment of extra money neither by referring the same to valuation officer for evaluation of the value.

3. Hon'ble CIT (Appeals) erred in law by confirming addition made for Long Term Capital Gain of Rs. 16,80,923/- by Ld. AO by denying the cost of improvement for want of necessary supporting documents.

4. Hon'ble CIT (Appeals) erred in law by confirming addition u/s 50C for substituting Jantri value of assets which is higher than actual sale price without considering the fact that the land is not a capital asset. Hence, provisions of section 50C is not applicable.

5. Hon'ble CIT (Appeals) erred in law as well as fact by confirming by making addition of Rs. 3,06,284/- u/s 68 for agricultural income disclosed by appellant for want of supporting documents.

6. Hon'ble CIT (Appeals) erred in law as well as fact by confirming addition of Rs. 10,83,539/- for opening balance of cash for want of source and treating the same as undisclosed sources.”

5. The both appeals filed by different assesseees` for Assessment Year 2014-15, are barred by limitation by 417 days and 173 days, respectively. Both the assesseees have moved separate petitions requesting the Bench to condone the delay. Since both the assesseees pertain to one family group, therefore contents in both the petitions for condonation of delay are similar and identical. Therefore, we take the lead case in ITA No. 39/Rjt/2025 for AY 2014-15 and accordingly the contents in the petition for condonation of delay in ITA No. 39/Rjt/2025, are reproduced below:

“I would like to submit before your honour with a prayer for condonation of delay of 430 days in filing of Appeal in Form 36 for AY 2014-15: -

1. I submit that Hon'ble Commissioner of Income Tax (Appeals), NFAC had passed order u/s 250 for A.Y. 2014-15 on 18/09/2023. However, the appeal against the same is not filed before your honour and leading to delay in filing by 430 days.

2. The chronology of events occurred is as under:



<i>Date of CIT(A)'s order</i>	<i>18/09/2023</i>
<i>Date of Communication of CIT(A)'s order</i>	<i>18/09/2023</i>
<i>Date upto which appeal should be filed</i>	<i>17/11/2023</i>
<i>Date of filing appeal by assessee</i>	<i>20/01/2025</i>
<i>Delay (in days)</i>	<i>430</i>

3. *I would like to your Honour to kindly consider the following reasons and condone the delay.*

4. *I would like to submit that the appellate order u/s. 250 was received in Primary email id and Secondary email id mentioned in my profile on Income tax portal which are as under:*

Primary email id: agnnpn3542r@gmail.com
Secondary email id: raju.bhvyas@gmail.com

5. *I would like to submit that the Primary email id belongs to my old Accountant who was handling the matter and accessed by him only. Further, Secondary email id also belongs to my previous tax consultant who was handling the appellate proceedings. Hence, I had not access of any of the Email IDs in which the order was received. Thus, receipt of appellate order was not in my knowledge.*

6. *Further, My son Mr. Jiteshbhai Ramniklal Nagda who was handling my matter was also not keeping good health which also leads to further delay in filing appeal. Copy of medical certificate is attached herewith.*

7. *I submit that due to above facts the delay of 430 days has caused. The above delay is because of the reasons beyond my control. All the above facts have been stated by me on Affidavit enclosed herewith.*

8. *In support of my request, I rely on the decision of Hon. Supreme Court in case of Collector, Land Acquisition vs. Mst. Katiji & Ors (1987 AIR 1353) where it was agreed that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*

9. *In view of the above, I pray before your honour to kindly condone delay in filing of Form 36 by 430 days and oblige."*

6. Shri Dushyant Maharshi, Learned Counsel of the assessee, referring to the above petition of condonation for delay, argued that the assessee provided two email-id to the Revenue Authorities, viz: (i) primary email-id and (ii) secondary email-id, noted above in the petition for condonation of delay. The notices were issued by the Ld. CIT(A), on the e-mail-id which belongs to the old accountant of the assessee. The old accountant of the



assessee did not inform to the assessee about status of the appellate proceedings, therefore, assessee, was not aware about passing the order by the the Ld. CIT(A). Therefore, learned Counsel contended that because of the mistake of the accountant/ tax consultant of the assessee, the assessee should not be penalized. Another reason for delay was that assessee`s son Mr. Jiteshbhai Ramniklal Nagda, who was handling assessee`s tax matter was also not keeping good health and for that assessee submitted necessary medical evidence before the Bench. The Ld. Counsel contended that delay in filing, both the appeals may be condoned, in the interest of justice.

7. On the other hand, the Ld. DR for the Revenue argued that delay in filing the appeal should not be condoned on these flimsy reasons. It is the duty of the assessee to provide current email id to department, which is active email id and it was also duty of the assessee, to examine the second email id given to the department. Therefore, arguments of the Ld. Counsel for the assessee, to the effect that the notices were delivered on the primary email id were baseless and therefore delay should not be condoned in both these appeals.

8. We have heard both the parties on this preliminary issue. We note that the notices were delivered by the Ld. CIT(A) on the primary email-id, which belongs to the assessee`s old accountant. The old accountant of the assessee did not inform to the assessee, therefore, the assessee was unaware about the notices sent by the Ld. CIT(A). However, we note that because of the mistake of accountant of the assessee, the assessee could not be penalized. For that reliance is also placed on the decision of I.T.A.T., 'C' Bench, Kolkata in the case of M/s. Garg Bros. Pvt. Ltd. & Others vs. DCIT [ITA Nos.2519 to 2521/Kol/2017, order dated 18.04.2018], wherein under



similar set of facts and reasons, the Hon'ble Tribunal was pleased to condone the delay of 211 days by holding as under:

"3. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the application for condonation of delay, we are of the considered opinion that assessee was under a bona fide belief that the impugned order of Pr. CIT was not appealable before this Tribunal since they were not advised by their Tax Consultants about this legal right. Later on, when a Senior Lawyer advised them to file an appeal, the assessee immediately took steps to file the appeals. Therefore, the delay caused. We note that delay was occurred because of the wrong advice of the Tax Professional for which assessee cannot be penalized. For the ends of justice, we condone the delay and admit the appeal for hearing.

9. The Ld. Counsel also submitted the other reason of delay that due to health issue, because the assessee's son who was handling the taxation matters of the assessee, has been suffering from the long illness. We have gone through both the petitions for condonation of delay, and the sufficient cause explained by the assessee, in the petition for condonation of delay, as reproduced above. The learned Counsel adverted our attention to the reasons for condonation of delay, and urged for a benign view and sought condonation of delay of 417 days and 173 days delay, respectively, in filing both the appeals. A perusal of the reasons and sufficient cause explained by the Ld. Counsel for the assessee, gives us an impression of existence of mitigating circumstances to enable us to exercise our discretion in favour of the assessee. Accordingly, the delay is condoned in filing both these appeals.

10. On merit, we note that assessee has filed additional evidences before the Bench and requested the Bench, to admit the additional evidences. The prayer of the assessee to admit the additional evidences, is reproduced below:



“We pray before Your Honours to kindly allow us to request you to consider the following additional evidences within the scope of Rule 46A of the I.T. Rules to support our argument and bring on record the correct fact relating to various grounds of appeal raised in the appeal memo filed:

- 1. Copy of Certificate received from Talati-Cum-Mantri for Vasai Land*
- 2. Screenshot of showing arial distance of Vasai from Jamnagar*
- 3. Copy of Valuation Report in case of Bhadresh Nagda*
- 4. Copy of Certificate received from Talati-Cum-Mantri for Naghedhi Land*
- 5. Screenshot of showing arial distance of Naghedhi from Jamnagar*
- 6. Copy of bills of Agricultural income and expenses*
- 7. Copy of statement of 7 & 8A of Naghedhi Land*

The aforesaid additional evidence could not be furnished before the Learned Assessing Officer during the assessment proceedings and Hon. CIT(A), as the same were not available at the time of assessment and appellate proceedings.

We further observed that the land purchased at Vasai and land sold at Naghedhi are not covered under the definition of capital asset as the same are situated at more than 8 kilometres from the limits of Jamnagar. Hence, the certificate of Talati-cum-Mantri of Vasai and Naghedhi are obtained after the completion of proceedings.

With respect to valuation report of co-owner, the same is issued by Departmental valuation officer on 06/08/2019 and hence, the same was not available at the time of assessment proceedings.

In view of the facts and circumstances, we shall be obliged if you would kindly consider the facts stated above and allow us to bring this additional evidence as referred to above in connection with the appeals filed by us.

We deeply regret the inconvenience caused if any in the matter but at the same time we are sure that in the interest of justice, you will accede to our request.

11. Index of the paper book, filed by the assessee, before the Bench, stating additional evidences, is, reproduced below:



BEFORE THE HONOURABLE INCOME TAX APPELLATE TRIBUNAL, RAJKOT
IN THE MATTER OF

Kantaben Ramniklal Nagda

APPEAL NO.: ITA - 39/RJT/2025

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10	Copy of statement of 7 & 8A of Naghedi Land	113-118
11	Copy of Cash Book for FY 2013-14	119-121

Certificate

This is to certify that all documents forming part of this paper book mentioned at serial no. 1, 2, 6 & 11 are produced before A.O. & CIT(A) and all other documents are additional evidences for which prayer for additional evidence is separately submitted.

Authorised Representative
CA Dushyant Maharishi
Date: 17/06/2025



12. Learned DR for the revenue submitted before us that both appeals were filed by the same family group members, and these additional evidences are applicable to these both appeals, therefore an opportunity should be given to the assessing officer to examine these additional evidences, hence the matter may be restored back to the file of the assessing officer for fresh adjudication.

13. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. Before us, learned Counsel for the assessee filed the written submission, on merit, on various grounds raised by the assessee, and the final request made by the assessee, in the written submission is reproduced below:

On the basis of above submission, we request your Honour to kindly delete the various additions made by Ld. AO. Alternatively, we request to restore back the matter to the office of Ld. AO for verification of supporting documents submitted.”

14. We note that **Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963** governs admission of additional evidence before ITAT, which states as follows:

“The parties shall not be entitled to produce additional evidence, either oral or documentary, before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined to enable it to pass orders or for any other substantial cause, or if the Income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence, the Tribunal may allow such document to be produced or witness to be examined.”

15. From the above rule 29, it is abundantly clear that normally, **no fresh evidence** can be filed before ITAT, but ITAT **has discretionary power** to



admit additional evidence if it is necessary for justice, or if the assessee was not given a fair chance earlier. The Hon`ble Supreme Court in the case of **K. Venkataramiah v. A. Seetharama Reddy [AIR 1963 SC 1526]** (SC) – held that Courts/Tribunals have inherent powers to admit additional evidence in the interest of justice. Therefore, by following the principle of **natural justice**, we should admit additional evidences, which are to be **remanded** (sent back) to the **Assessing Officer**, for examination and adjudication of these appeals.

16. Before us, as noted above, assessee submitted additional evidences, which are connected mostly with all the grounds raised by both these assessees, and these additional evidences were neither submitted before the assessing officer nor before the learned CIT(A), therefore, we are of the view that an opportunity should be given to the assessing officer, to examine these additional evidences and adjudicate the various issues raised by the assessee in grounds of appeals in accordance with Law. The learned Counsel for the assessee also prayed before the Bench that these additional evidences should be admitted and matter may be restored back to the file of the assessing officer for fresh adjudication. On the other hand, learned DR for the revenue also accepted the plea of the learned Counsel for the assessee to the effect that these additional evidences should be remitted back to the file of the assessing officer for fresh examination.

17. Therefore, we accept the prayer of the assessee and set aside the order of CIT(A) and remand the various issues raised by the assessee in the grounds of appeal before CIT(A) for fresh consideration by the assessing with a liberty to the assessee to prove his case by producing sufficient evidence/material/additional evidences to the satisfaction of the assessing



officer. For statistical purposes, both the appeals of the assesseees are allowed.

18. In the result, both appeals filed by the assesseees, are allowed for statistical purposes.

Order is pronounced in the open court on 10/09/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 10/09/2025

Copy of the Order forwarded to

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

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot