

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.126/SRT/2025**

**Assessment Year: 2017-18**

**(Hybrid hearing)**

Bhadrabala Dhimantraai Joshi 6 <sup>th</sup> Shree Nagar Society, Ghod Dod Road, Surat-395 001	<b>बनाम/ Vs.</b>	Assistant Commissioner of Income-tax, Circle-1(3), Surat, Anavil Business Centre, Adajan, Surat-395 007
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAZPJ 4561 G</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

<b>निर्धारिती की ओर से /Appellant by</b>	Shri P.M. Jagasheth, CA
<b>राजस्व की ओर से /Respondent by</b>	Shri Ajay Uke, Sr-DR
<b>सुनवाई की तारीख/Date of Hearing</b>	04/08/2025
<b>उद्घोषणा की तारीख/Date of Pronouncement</b>	26/09/2025

**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') dated 20.01.2025 by the National Faceless Appeal Centre, (NFAC), Delhi /Commissioner of Income-tax (Appeals) [in short, the 'CIT(A)'] for the assessment year (AY) 2017-18, which in turn arises out of assessment order passed by the Assessing Officer (in short, 'AO') u/s. 143(3) of the Act on 03.12.2019.

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

*"1. On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.1,21,92,898/- on account of alleged disallowing immunity claimed u/s.2(14) of Income-tax Act, 1961 by treating again as business income, which ground has never been conveyed and/or initiated to respond and revealed through Assessment order only. As no opportunity is afforded either through any notice and/or more*

*importantly under show cause notice about the said ground of addition, it amounts to arbitrary decisions to our belief and against spirit of natural justice.*

*2. On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income tax (Appeals) has erred in confirming the action of the Assessing Officer in finalizing the Assessment proceedings as based on imaginary and wrong interpretation of Section 2(14) of Income tax Act, 1961 upon probability on one hand and by dishonoring supporting evidences upon suspicion and misleading Google images on other hand which amounts to illegal and bad in law and liable to be quashed as onus is not discharged in its true spirit to deliver justice.*

*3. On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income tax (Appeals) has erred in confirming the action of the Assessing Officer in justifying and discharging onus on the strength of facts and /or legal ground both in regards to findings for rejecting the immunity u/s 2(14) of Income tax Act, 1961 as well as concluding remarks to support the judgement for addition and simply based on misleading facts and logical ground which do not stand good eyes in law.*

*4. On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income tax (Appeals) has erred in confirming the action of the Assessing Officer in initiating penalty proceeding u/s.270A(8) r.w.s. 270A(9) of Income tax Act, 1961 for misreporting of income by issuing notice u/s.270A of Income tax Act, 1961.*

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

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

3. Brief facts of the case are that the assessee filed return of income for AY 2017-18 declaring total income of Rs.26,87,190/-. Case of the assessee was selected for limited scrutiny and notice u/s.143(2) of the Act was issued on 16.08.2018. The reasons for scrutiny selection were (i) share capital/capital and (ii) capital gain/loss on sale of property. During the year, assessee sold rural agriculture land and derived capital gain of Rs.1,21,92,898/- which is claimed as exempt u/s.2(14)(iii) of the Act. Assessee was requested vide statutory

notices and show cause notices to furnish details relating to sale of immovable properties, addition in capital a/c., details of capital gain on sale of properties, exact location of land, GPS co-ordinates, purchase and sale documents of transferred land, nature and use of land during preceding 3 assessment years, etc. In compliance thereto, assessee furnished details from time to time. On perusal of the material on record and reply of the assessee, it was concluded by the AO that the assessee not only failed to satisfy the conditions laid down in sub-section 2(14)(iii) of the Act but also transferred properties which fell in the category of stock-in-trade and not capital asset. Therefore, the profit on such sale was not eligible for exemption from taxation. In view of the same, the claim of tax exemption made in subsection 2(14)(iii) of the Act of Rs.1,21,92,898/- was rejected and the same was added as business income to the total income of the assessee. Order u/s.143(3) of the Act was passed on 03.12.2019 determining total income at Rs.1,48,80,090/-.

4. Aggrieved by the assessment order, assessee preferred appeal before CIT(A). During the appellate proceedings, it was observed by CIT(A) that the AO made addition after considering all the details and after giving due opportunity of being heard to the assessee. It is further observed by the CIT(A) that the assessee was not actually an agriculturist but a lawyer by profession and a business person. There was no real agricultural activity on the impugned lands sold by the assessee. The said land was also situated in jurisdiction of Amod Municipality, whose population was more than 10,000. Therefore, the land in question did not fulfil the condition as mentioned in clause (a) to section 2(14)(iii) of the Act for being treated as agricultural land and exempted from

capital asset. In view of these facts, the CIT(A) held that lands sold by the assessee was not eligible for exemption u/s 2(14)(iii) of the Act and accordingly, the addition of Rs.1,21,92,898/- made by the AO was confirmed. The CIT(A) relied upon decisions of the Hon'ble Supreme Court in the case of G.M. Omer Khan vs. Additional CIT [1992] 63 Taxmann 533 (SC). Reliance was also placed on the decision of Hon'ble Madras High Court in case of S. Hidayatullah vs. CIT (1986) 158 ITR 20 (Mad) and the decision of Hon'ble Delhi High Court in case of CIT vs. Surjan Singh (2002) 125 Taxmann 1075 and other cases.

5. Further, aggrieved by the order of CIT(A), the assessee has filed appeal before the Tribunal. The Ld. A.R. submitted a paper book consisting of Certificates of Mamlatdar and Executive Magistrate, copy of the Gujarat Tenancy and Agricultural Land Act, 1948, copy of sale deed No. 1481/2016, Form of Certificate to be issued to the purchaser of land for *bona fide* industrial purpose u/s.63AA of Gujarat Tenancy and Agriculture Lands Act, 1948, Permission by the Collector, Bharuch for non-agriculture land and industrial purpose u/s.65(B) of Land Revenue Act, submission filed before CIT(A), etc. In addition to this, assessee placed reliance on following case laws:

- (i) *CIT Vs. Rajshibhai Meramanbhai Odedra [2014] 42 Taxmann.Com 497 (Gujarat H.C.).*
- (ii) *CIT Vs. Siddharth Desai [1982] 10 Taxman 1 (Guj. HC)*
- (iii) *CIT Vs. Vajulal Chunilal [1979] 1 Taxman 438 (Guj. HC)*
- (iv) *CIT Vs. Manilal Somnath [1977] 106 ITR 917 (Guj. HC)*
- (v) *Pr. CIT, Rajkot -1 Vs. Heenaben Bhadresh Mehta [2018] 96 Taxmann.Com 164 (Guj. H.C.)*
- (vi) *Gordhanbhai Kahandas Dalwadi Vs. CIT [1981] 127 ITR 664 (Guj. H.C.)*

*(vii) Shri Daxeshkumar G. Suthar Vs. ITO, Wd- 6(2), Surat (ITA No. 1540/Ahd/2016 (ITAT, Surat Bench).*

5.1 The Ld. A.R. submitted that the assessee had never applied for conversion of the said agricultural land into non-agricultural land and also never carried out any development activities at the said agricultural land nor had done any plotting on the said agriculture land, due to which the said transaction should not be treated as adventure in the nature of trade. Regarding the observation made by AO that assessee had sold 6 plots of land in one year (AY 2017-18) and carried out more than 10 sale transactions in 5 years, it is submitted that aforesaid 6 transactions were of different blocks of same land and could not be considered as six separate sale transactions. The Ld. AR submitted that the assessee had sold only 2 plots in the last three years. It is further contended that appellant is lawyer by profession and comes from family of agriculturists. The Ld. AR also submitted that extent of gains earned by the assessee on sale of land should not be the basis for deciding the nature of land. He also contended that AO had wrongly concluded that appellant accepted advance for land. Those schedule represents "receivables" and therefore, depicted on 'asset' side. The same did not pertain to part of liability side as claimed by the AO and the assessee did not accept any advances for sale of land.

5.2 The Ld. AR also submitted that it is improper to state that the artificial high price was given to the appellant since the same value was also paid against the sales proceeds of nearby land belonging to other persons during

the same period. As regards the contention of transaction carried with the related party, it is submitted that appellant had purchased impugned land during FY 2014-15, while she became director of related party during F.Y. 2015-16. Regarding the nature of land and agriculture activity on it, he submitted that the assessee has duly earned agriculture income in the preceding 4/5 years. Appellant's copy of ITR and computation of income for the AY. 2014-15 to AY 2016-17 reflected agriculture income and in addition to this, copy of 7/12 and 8A submitted also confirmed agricultural activity on the said land. Further, the said land is agricultural land as per land revenue records. The assessee had duly submitted certificate from Mamlatdar as evidence of said land to be agriculture land situated in rural area and also as evidence of carrying agricultural activity on the said land. It is contended that AO had wrongly disregarded the aforesaid certificate from Mamlatdar without verifying various revenue documents such as 7/12, 8A and Form No.12 submitted by the assessee and the AO relied only on vague google images. It is also submitted that the aforesaid agricultural land was situated at Sudi Village, having a population of less than 10,000 and it is situated at a distance of more than 15 km. from Amod, having population of more than 10, 000 but less than 1,00,000. Therefore, it is contended that the said land is rural agricultural land as conditions of more than 2 kilo meters from Amod as specified in Section 2(14)(iii) of the Act is duly satisfied. Regarding the agricultural bill dated 18.04.2014 i.e., 5 months before the purchase of said plots of land, it is

submitted that the above bill pertained to sale of agriculture produce from another land and was submitted for proving agricultural income of previous years. Regarding the potential future use of agriculture land, it is submitted that it is totally irrelevant considering the provisions of Section 2(14)(iii) of the Act. The Ld. AR has also placed reliance on the following decisions of the Hon'ble jurisdictional High Court :

- (a) Gordhanbhai Kahandas Dalwadi vs. CIT (1981) 127 ITR 664 (Guj.)
- (b) Motibhai D. Patel vs. CIT (1981) 127 ITR 671 (Guj)
- (c) Manibhai Motibhai Patel vs. CIT (1981) 131 ITR 120 (Guj.)
- (d) CIT vs. Siddharth J. Desai (1983) 139 ITR 628 (Guj)
- (e) PCIT vs. Heenaben Bhadresh Mehta, (Guj H.C. Appeal no. 672 of 2018)
- (f) CIT vs. Manilal Somnath , 106 ITR 917 (Guj.)
- (g) Chhotalal Prabhudas vs. CIT [1979] 116 ITR 631 and others.

5.3 It is submitted by the Ld. AR that in view of furnished documents, supporting evidences and judgments of Hon'ble jurisdictional High Court, it is clear that the land in question is an agricultural land situated in a rural area. The said land is not a capital asset as per Section 2(14) of the Act as it satisfies all the criteria of being agricultural land, therefore, the sale of the said agricultural land does not attract any capital gains.

6. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by both the sides. It is seen that the impugned land was recorded as agricultural land in revenue records and has not been converted to non-agricultural land by the

appellant prior to sale. Certificates from the Mamlatdar and Executive Magistrate affirm both the agricultural nature and location of the land. Besides, the population of the village Sudi, where land is situated, is less than 10,000 and it is more than 15 km from Amod, thereby satisfying the requirements u/s 2(14)(iii)(a)/(b) of the Act . Besides, agricultural income has been shown consistently in ITRs for AYs 2014-15 to 2016-17 and has not been disputed by revenue. Also, the land was not subjected to plotting, construction, or development. Though the AO has relied on satellite images and proximity to industrial development, but no direct evidence of non-agricultural use by the assessee has been brought on record.

6.1 Section 2(14)(iii) of the Act specifically excludes rural agricultural land from the definition of “capital asset” if the land is situated outside the jurisdiction of a municipality with a population not exceeding the specified limits and the land has not been used for any non-agricultural purpose by the assessee.

6.2 The Hon’ble courts have consistently held that: (i) The entry in revenue records and past user of land are significant; (ii) Potential of the land for non-agricultural use or subsequent sale to industrial/commercial entities is not determinative of the character of the land; and (iii) The presumption in favour of agricultural land can only be rebutted by strong evidence of change in character of land.

6.3 In the case of Siddharth J. Desai (supra), it was observed that the appellant had purchased an agricultural land which was used for agricultural purposes continuously for three years prior to sale. Aforesaid land was entered in revenue as agricultural land and it was not situated within municipal limits. Subsequently, it was sold by the assessee to a housing society after obtaining permission under the Bombay Tenancy and Agricultural Lands Act, 1948. For one year prior to sale, said land was not put to agricultural use but it was also not converted to any other use. It was held by Hon'ble Gujarat High Court that impugned land was agricultural land and hence, surplus arising from its sale was not liable to capital gains.

6.4 In the case of Manilal Somnath (supra), it was observed that assessee was holding an agricultural land which was subsequently sold a non-agriculturist after obtaining permission to sell said land to non-agriculturist. It was held by Hon'ble jurisdictional High Court that because a particular plot of agricultural land has potential non-agricultural value for which a purchaser is prepared to pay a high price, does not mean that it is not an agricultural land.

6.5 In the case of Heenaben B. Mehta (supra), it was observed by the Hon'ble Gujarat High Court that where an assessee was an agriculturist and land owned by him had been shown as agricultural land in revenue records, mere fact that said land had been sold to an industrial unit and had potential to be used for industrial purpose, could not be a determinative factor to treat profit earned by the assessee on sale of agricultural land as business income.

6.6 It is observed by Hon'ble jurisdictional High Court in the case of CIT vs. Rajshibhai Meramanbhai Odedra [2014] 42 taxmann.com 497 (Guj.) that merely because agricultural land was sold in favour of non-agriculturist in breach of law prevailing in State, said land would not lose its character as agricultural land and, hence, could not be treated as capital assets.

6.7 In all the above cases, the Hon'ble High Court has ruled in favour of the assessee where the land was classified as agricultural land in revenue records and there was no evidence of conversion or non-agricultural use. In light of the facts and evidence on record and the precedents cited supra, we are of the considered view that the land sold by the appellant was agricultural land and not a capital asset within the meaning of Section 2(14) of the Act. The land was not converted or developed for any non-agricultural purpose prior to its sale and hence, the sale thereof does not constitute a business transaction or adventure in the nature of trade. The order of CIT(A) is accordingly set aside and the AO is directed to delete the addition.

7. Ground No.4 pertains to confirmation of the action of AO in initiating penalty proceedings u/s 270A(8) r.w.s. 270A(9) of the Act. The penalty proceedings initiated under the above sections are liable to be quashed as the foundational addition itself has been deleted. This ground is accordingly allowed.

8. The appellant has also raised ground regarding denial of natural justice. We find that the AO issued multiple notices seeking details of the impugned land, its usage, ownership etc. The appellant responded to the same and filed written submission and supporting documents. The finding of the AO is based on verification and appreciation of such materials. Hence, we do not find any infirmity in the assessment proceedings u/s 143(3) of the Act. The assessment order cannot be said to have been passed in violation of the principles of natural justice. Accordingly, the ground is dismissed.

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

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on 26/09/2025 in the open court.

Sd/-  
(DINESH MOHAN SINHA)  
न्यायिक सदस्य/JUDICIAL MEMBER  
सूरत /Surat  
दिनांक/ Date: 26/09/2025  
Dkp Outsourcing Sr.P.S\*

Sd/-  
(BIJAYANANDA PRUSETH)  
लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रोषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

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By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत