

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE**

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.2154/PUN/2024
निर्धारण वर्ष / Assessment Year : 2013-14**

Ashok Somnath Sonawane, Tara Kutir Bunglow, Mahatma Nagar, Nashik-422005 PAN : ALOPS7734A	Vs.	ITO, Ward-2(1), Nashik
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri Suhas Vadulekar (Virtual)
Department by :	Shri Ramnath P. Murkude
Date of hearing :	23-07-2025
Date of Pronouncement :	30-09-2025

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 05.09.2024 of the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi [**CIT(A)/NFAC**] pertaining to Assessment Year (**“AYs”**) 2013-14.

2. The assessee has raised the following grounds of appeal:-

“Ground 1-On the facts and in the circumstances of the case, the assessment order is bad in law as the AO had not furnished reasons for re-opening the assessment in spite of written request of the Appellant.

Ground 2- On the facts and in the circumstances of the case, the assessment order is bad in law as the issue for re-assessment emerged from the audit objection in the case of appellant wherein all facts were disclosed at the time of regular assessment U/s 143(3).

Ground 3- On the facts and in the circumstances of the case& in the law, order of the CIT-A is invalid and violates principal of natural justice as CIT-A has not adjudicated Ground No 1 to 4 of the appellant which are crucial grounds of appeals.

Ground 4- On the facts and in the circumstances of the case & in the law, the CIT-A has erred in Confirming addition of Rs. 2,74,53,736/- without considering submission by the appellant, without demanding any report from AO and solely on the basis of assessment order.

Ground 5- Whether on the facts and in the circumstances of the case& in the law, the CIT-A NFAC was justified in deciding the appeal for 50% of the transaction value without considering decisions in the case of Spouse of

appellant (In whose case 50% value was covered) by CIT-A NFAC and Hon. Pune ITAT which was in the knowledge of Jurisdictional Assessing Officer?

Ground 6- On the facts and in the circumstances of the case& in the law the CIT-A has erred in decided a question which was not raised either in the grounds of appeal or by the AO and such action is not permissible under the law.

Ground 7- Whether on the facts and in the circumstances of the case, the AO and CIT-A is justified in ignoring the simple fact that stamp duty was paid by the purchaser for a reason expressly given in the sale agreement and appellant had received amount as per the rate of agricultural land?

Ground 8- Whether on the facts and in the circumstances of the case, the AO and CIT-A is justified in applying Judgement of Hon SC in the case of Sarifabibi Mohammad Ibrahim & Others 204 ITR 631(SC) to appellant case where all facts are distinct and judgement is not applicable?

Ground 9- The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal as and when the occasion demands.

In the view of the above grounds and in the facts and circumstances of the case and in the law, the Appellant prays your Honours to allow the appeal against the order passed by CIT(A) under 250 of the Act.”

3. It is a case of reopening of assessment. Initially, the assessment was completed u/s 143(3) of the Income Tax Act, 1961 (**the “Act”**) on 19.01.2016 by the then Ld. Assessing Officer accepting the return of income of the assessee wherein the assessee’s claim of deduction u/s 54B of the Act was allowed based on the evidence/information submitted by the assessee during the assessment proceedings. Subsequently, the case was reopened by the Ld. Assessing Officer (**“AO”**) u/s 147 of the Act by issuing notice u/s 148 of the Act on 19.11.2018 with the prior approval of the Jt. CIT, Range-2, Nashik u/s 151(2) of the Act. In response thereto, the assessee filed his return of income for the AY 2013-14 on 08.05.2019 declaring total income at Rs.8,84,066/-. The reason recorded by the Ld. AO for reopening of assessment is that the assessee has claimed exemption u/s 54B but at the same time failed to adhere to the provisions of section 63 of the Bombay Land Revenue Code. The assessee sold the agricultural land to a person who intended to use it for non-agricultural purposes. The assessee claimed the exemption u/s 54B treating the land as agricultural which is not true in this case. Since the assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration, it has necessitated the re-opening u/s 147 of the Act. Accordingly, notice u/s 142(1) of the Act along with questionnaire were issued and served upon the assessee. In response thereto, the assessee filed its reply along with copies of certain documents such as 7/12 extracts

of the land sold, MOA of the purchaser, copy of Google Map indicating location of the impugned land, population data of Shahapur town etc.

4. Before the Ld. AO, the assessee submitted that he has 50% share in the above said immovable properties sold by the assessee and that the land sold is not a capital asset as it is a agricultural land at the time of sale and even till date it is not used/converted for any non-agricultural purposes. It was further contended that sale for the purpose of prospective non-agricultural use does not alter the character of the land. The fact that the land in question was purchased by a developer cannot be a determining factor for treating the land to be converted for any purposes.

5. The Ld. AO was of the opinion that as per section 63 of the Bombay Tenancy & Agricultural Land Act, 1948, the sale of agricultural land is not valid if it is sold to non-agriculturist. Applying the decision of Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohamed Ibrahim & Others, 204 ITR 631 (SC), the Ld. AO concluded that the agricultural land sold for non-agricultural purpose cannot be exempt for capital gain tax. The Ld. AO accordingly issued a show cause notice to the assessee to explain as to why the difference in sale consideration received on market value amounting to Rs.2,74,53,736/- as per stamp value authority should not be treated as short term capital gain ("**STCG**") u/s 50C of the Act treating it as a capital asset. The assessee filed its submissions in response to the said show cause notice. However, the submissions of the assessee were not found to be acceptable by the Ld. AO and he completed the assessment u/s 143(3) r.w.s. 147 of the Act vide his order dated 19.12.2019 making an addition of Rs.2,74,53,736/- to the income of Rs.8,84,066/- returned by the assessee resulting in assessed income of Rs.2,83,37,800/-.

6. Aggrieved, the assessee carried the matter before the Ld. CIT(A)/NFAC who dismissed the appeal of the assessee by observing as under :

"3.7 On perusal of the stated agreement for sale and on perusal of the decision of the Assessing Officer made in the assessment order two distinct issue had come up for decision in the present appeal.

- 1) *Whether the sale of the land parcels can be considered as sale of agricultural land which is not a capital asset and*
- 2) *whether the assessee is eligible to get benefit u/s.54B of the Act for use of such land in investment in further acquisition of agricultural land.*

3.8 Regarding the first issue of whether the sold land is to be considered as capital asset we find two contradictory statements from the submitted documents. At one hand, through a certificate dated 12.07.2016, the Tahsildar and Executive Magistrate of Shahapur, District- Thane, Maharashtra, certified that the sold land are agricultural lands and in use as agricultural lands as on 12.07.2016. Secondly, in such certificate, it was mentioned that the distance of the agricultural land sold through two separate deeds of agreement were situated beyond 8 Kms. of the nearest Municipal boundary.

3.9 On the other hand, in the deed of agreement for sale, the registering authority mentioned that the sold land were agricultural land and the purchaser who is buying the company is a farmer company but the purchaser intends to use the land mentioned for residential and commercial purpose. The said agreement for sale also mentioned that to avoid paying stamp duty again on non-agricultural value in future, if the property is classified as non-agricultural, the amount of stamp duty as per non-agricultural valuation as on date of agreement of sale i.e. 24.10.2010 is being paid by the purchasing company. The said deeds of agreement of sale also mentioned that since the purchasing company is itself a farmer and purchasing the property for purpose for residence and commercial purpose, it is not required to take permission from the Industrial Commissioner u/s.63A of Maharashtra Revenue Act.

3.10 Following the above stated facts in the documents, the first observation of the Assessing Officer that there was a violation of section 63 of the Bombay Tenancy and Agricultural Act 1948 does not stand good. However, the Assessing Officer also mentioned the case law of the Hon'ble Supreme Court reported in 204 ITR 631, which held that if the agricultural land was sold for non-agricultural purpose, there cannot be any exemption for capital gains tax.

3.11 The assessee during the appellate stage has given a comparative chart of facts of the mentioned Supreme Court decision and the facts of the appellant's case, which is narrated as follows:-

<i>Facts of Sarifabibi Mohmed Ibrahim Vs CIT Case</i>	<i>Facts in the Appellant's Case</i>
<i>1. The land was situated within the municipal limits of Surat City and was situated at a distance of one KM from Surat Railway Station</i>	<i>1. The land situated at Village Shirgaon in Shahapur Taluka at a distance of 9 KMs from Shahapur Municipality.</i>
<i>1. A part of the land was converted into Non agricultural purposes on 28/03/1958. And land sold was also converted to NA purpose after sale deed</i>	<i>1. No part of land was converted for Non agricultural use ever. As on date also the land is agricultural in nature and no application for conversion into Non agricultural is made.</i>
<i>2. Application for permission under Section 63 of Bombay Tenancy and Agri Lands Act 1948 before execution of Sale deed in May 1969.</i>	<i>1. No permission under section 63 was applied or taken.</i>
<i>1. The land was sold on per sq. yard basis</i>	<i>1. Land is sold on acreage basis.</i>
<i>1. Construction activities was started by purchasing party within</i>	<i>1. No construction is started or done as on date and the land is still Agricultural in character.</i>

<i>three days of the execution of the sale deeds in its favour.</i>	
<i>1. No agricultural operations were carried out from 1965-66 until it was sold in 1969.</i>	<i>1. Agricultural operations were there since many years in the past till date of sale.</i>
<i>1. It was established in court that assessee had no intention to bring the land under cultivation after 1965-66.</i>	<i>1. No facts brought on record to establish non-agricultural use by the assessee.</i>
<i>1. The purchaser had purchased land at a commercial non agricultural rate.</i>	<i>1. The purchaser had paid consideration as per agricultural land rate.</i>

3.12 I have perused the submitted documents and I have also perused the distinction made by the assessee of his case with that of the decision of Hon'ble Supreme Court and I conclude as follows:- There is no doubt that the sold land was earmarked as an agricultural land and situated beyond 8 Kms of Municipal boundary but there is no documentary evidence put forward by the assessee to show that he had undertaken any agricultural activity on the said pieces of land since purchase of the land on 22.07.2010. It is clearly understood that although the purchasing company registered itself as a farmer company but it had the clear intention to use the land for non-agricultural purpose and therefore it was ready to pay additional stamp duty as applicable for non-agricultural purpose. It is true that as per certificate issued by the Tahsilder even up to July, 2016 there is no activity on behalf of the purchaser to initiate any activity for construction of residence and commercial building. However, the mere fact that the intention was not to engage in farming was crystal clear from the documentary evidences. The purchasing company did not engage the land for any agricultural purpose is also from clear as there was no such claim made by either of the parties.

3.13 Therefore, I fully agree that the sold properties are not exempted capital asset as per section 2(14) of the Act. Therefore, I hold no hesitation in accepting the decision of the Assessing Officer that the sold property was not agricultural property and therefore it is clearly liable for capital gains tax. Now once it is decided that the sold property is in the nature of land or building the attraction of section 50C is clearly inevitable and as per such provision of the Act the value of the sale consideration has to be accepted as per the valuation made of the property for stamp duty calculation. In this case since stamp duty was paid at a much higher rate and the registered documents itself has given the market price on which actual stamp duty was paid and collected is given, such value has to be adopted as sale consideration irrespective of actual valuation for which the lands were transferred. Therefore, I agree to the Assessing Officer that the consideration of sale has to be 50% of the value assessed by the stamp duty assessor in case of the assessee and the ground of appeal in this regard is rejected.

4.1 Coming to the second part of the issues mentioned earlier whether the assessee is eligible for any deduction u/s.54B, I find that the statue clearly says that where capital gain arises from sale of a land are two years immediately preceding the date on which the transfer took place was being used by the assessee for agricultural purpose, if the assessee purchased agricultural lands by using such capital gain a deduction u/s.54B is to be allowed to the assessee. In this particular case, there is no documentary evidence that the assessee had ever used the said plots of lands for agricultural activity although the land was certified to be agricultural land by the Tahsilder. In absence of documentary evidence that the assessee himself engaged in the activity of farming in the plots of land, the assessee is not

eligible for any deduction u/s.54B of the Act, even if, it has used the capital gain amount for purchase of further pieces of agricultural land. Therefore, appeal also fails on this ground of deduction u/s.54B.

5. Overall, I accept the assessment made by the Assessing Officer in the reopened assessment u/s.147 of the Act and the appeal of the assessee is dismissed.”

7. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds of appeal relate thereto.

8. The Ld. AR, at the outset, submitted that the similar assessment was done in the case of the assessee's wife Smt. Smita Ashok Sonawane and the Ld. CIT(A)/NFAC has allowed the appeal of the assessee's wife vide order dated 30.08.2023. When the matter was challenged by the Revenue before the Pune Tribunal in the case of ITO Vs. Smita Ashok Sonawane, ITA No. 1119/PUN/2023 for AY 2013-14, the Tribunal vide its order dated 31.07.2014 has dismissed the appeal of the Revenue by directing the Ld. AO to delete the addition of Rs.2,74,53,736/- (being 50% of the value of impugned transaction) in the hands of the assessee's spouse.

8.1 The assessee in Smita Ashok Sonawane's case had raised the following effective ground of appeal :

“i) Whether on the facts and in the circumstances of case, the Ld.CIT(A), NFAC was justified in directing the AO to delete the addition of Rs. 2,74,53,736/, ignoring the applicability of the Hon'ble Supreme Court decision in the case of Smt. Sarifabibi Mohamed Ibrahim & Others 204 ITR 63i(SC), the agricultural land sold for non- agricultural purpose cannot be exempt for capital gain tax.”

9. The Ld. DR relied on the order of the Ld. AO and Ld. CIT(A)/NFAC.

10. We have heard the Ld. Representatives of the parties, perused the material on record and paper book filed by the Ld. Counsel on behalf of the assessee. Admittedly, the assessee jointly with his wife sold the impugned land to one company, named Prospective Estate and Realty Logical Solutions Pvt. Ltd. vide registered agreement for sale dated 24.10.2012. We find that in the Revenue's appeal in the case of the spouse of the assessee, i.e. ITO Vs. Smita Ashok Sonawane (supra), the Co-ordinate Bench of the Tribunal has decided the impugned issue for 50% of the transaction value and dismissed the appeal of the Revenue holding that the impugned lands were agricultural lands and no capital gain is payable for the transaction. The relevant observations and findings of the Tribunal in the said case are reproduced below :

“Findings & Analysis :

7. We have heard ld.DR for the Revenue and perused the records. We are first considering the Revenue's appeal in ITA No.1119/PUN/2023.

7.1 In this case, ld.CIT(A) in para 10.2 has observed that for A.Y.2014-15 in the case of the assessee, Additional Commissioner of Income Tax, Range-2, Nashik had issued direction u/sec.144A of the Act with reference to the same issue that the land sold was agricultural land and hence not a capital asset. We have perused copy of the direction issued u/sec.144A by the Additional Commissioner of Income Tax, Range-2, Nashik for A.Y.2014-15. The said directions reproduced here as under:

“01. Vide the letter under reference dated 07/11/2016, the ITO Wd 2(1), Nashik has sought instructions/ directions to be issued to him u/ s. 144A in respect of the ongoing scrutiny assessment proceedings before him for A.Y. 2014-15. The AO has referred the case for issue of directions in view of his observations which are reproduced below.

'The case of Shri Somnath Ashok Sonawane, was selected for scrutiny assessment for the A.Y. 2013-14 on the reason "Large deduction claimed u/s 54B, 54C, 54D, 54G, 54GA" and the assessment was finalized after accepting the said claim. Further, the Revenue Audit raised objection regarding the said claim and stated that as per section 63 of the Bombay Tenancy & Agricultural Land Act, 1948, no sale of agricultural land is valid in favors of person who is not an agriculturist. He further stated that the Hon'ble Supreme court of India in the case of SmtSarifabibi Mohmed Ibrahim & Others 204ITR 631(SC) has also held that the agricultural land sold for non-agricultural purpose cannot be exempt for capital gain tax. Therefore, the said claim should have been rejected and accordingly, Short-term capital gain should have been calculated during the assessment proceedings for the **A. V. 2013- 14** as per the Revenue Audit.

Since, the case of Smt. Smita Ashok Sonawane is based on similar issue, your kind direction is solicited u/s 144A of the IT Act, 1961 for finalization of scrutiny assessment for the A.Y. 2014-15 in the above case. The case record of Shri Ashok Somnath Sonawane for the A.Y. 2013-14 in one volume and Smita Ashok **Sonawane for** the A. Y. 20U-15 in **one** volume are being submitted with this letter **for your kind perusal and necessary** direction. The scrutiny **assessment in the case of** Smita Ashok Sonawane far the AY 2014-15 Is getting time barred on 31.12.2016.'

02. On receipt of the reference from the ITO Wd 2(1), Nashik as mentioned in para 01 above, the assessee was called upon to attend personally or through her Authorized Representative on 17/11/2016. Explanation was sought on the issues raised by the ITO Wd 2(1), Nashik in the pending assessment proceedings for A.Y 2014-15, which has been reproduced in para 01 above.

03. On the said date, Shri Suhas A. Vadulekar, CA from M/s. Anand Bang & Associates, CAs duly authorised attended and the case was heard. Written submissions were filed on the said date and on 23/11/2016 and the issues involved were discussed at length. During the proceedings, the Authorized Representative of the assessee, in addition to the written submissions, has submitted copies of the certificate issued by the Tehsildar, Shahapur dated 12/07/2016, 7/12 extracts of the land sold, MO A of the purchaser Prospective Estate and Realty Logical Solutions Pvt. Ltd, copy of Google Map indicating location of the impugned land, population data

of Shahapur town etc.

03.1 It was submitted by the Authorized Representative of the assessee that the impugned land is agricultural land situated at Mauje. Shirgaon Taluka: Shahapur, District: Thane, in Gat nos. 263,264,280,284 and 290 admg 1-H-36R. It is submitted that the assessee vide a registered sale agreement deed dated 22/07/2013(registered with the Sub-Registrar Shahapur District: Thane on 14/10/2013), has sold the agricultural land as above to Prospective Estate and Realty Logical Solutions Pvt. Ltd., Mumbai. The consideration for the sale is Rs. 40,00,000/- (value for the purpose of stamp duty is Rs. 1,61,68,000/ -). It was also submitted that the population of Shahapur town (Municipality) is 11,623 as per the latest census (2011) and the agricultural land sold is at a distance of 09 kms. from Shahapur Town (Municipality) . Hence, it is submitted that in view of the amended provisions of section 2(14)(iii)(b)(I), the land is not a capital asset the transfer of which can be considered for taxation under the headCapital Gains.

04 The Authorized Representative of the assessee contended that the impugned land is an agricultural land at the time of sale and even till date and is not used/ converted for any non-agricultural purposes. It is further contended that sale for the purpose of prospective non-agricultural use does not alter the character of the land. The fact that the land in question was purchased by a developer cannot be a determining factor for treating the land to be converted for any purposes. In support of the above, the Authorized Representative of the assessee relied upon various judicial pronouncements in his written submissions filed on 17/11/2016.

05. The case of the assessee was also discussed at length in the context of the decision of the Hon'ble Supreme Court in the case of SmtSarifabibi Mohammad Ibrahim and Ors. 204ITR 631 (SC) in which it has been held that agricultural land sold for non-agricultural purpose cannot be exempted from capital gain tax. Further, the case was also discussed in the context of Section 63 of the Bombay Tenancy and Agricultural Land Act, 1948, as per which no sale of agricultural land is valid in favourof a person who is not an agriculturist.

05.1 On the above issues, the Authorized Representative of the assessee submitted that the facts of the present case are totally different from the facts emerging from the decision of the Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohammad Ibrahim and Ors. (supra). Further, in respect of the provisions of section 63 of the Bombay Tenancy and Agricultural Land Act, 1948, it is submitted by the Authorized Representative of the assessee that these provisions have no relevance to the issue of taxation on the transfer of land from an agriculturist to a person who is not an agriculturist.

Directions:

06. The submissions made during the proceedings were examined in the context of the reference made by the AO and the case records. It is clearly seen that the facts as emerging from the decision of the Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohammad Ibrahim and Ors. (supra) are not in consonance from the case of the assessee. The facts emerging from both the cases are presented below:

Facts as in the case of Smt. Sarifabibi Mohammad Ibrahim and Ors	Facts as in the assessee's case
Land in question was situated within the Municipal limits of Surat Municipality and was situated at a distance of 01 kms. from Surat railway station.	Land in question is situated in village Shirgaon Taluka: Shahapur District: Thane and is at a distance of 09 kms. from Shahapur Municipality.
Part of the land was converted for non- agricultural purposes on 28/03/1958 and the land sold was also converted for non- agricultural purposes after the sale deed.	Part of the land was converted for non-agricultural use before or after the sale, even as on date the land is agricultural in nature and no application for conversion into non-agricultural use is made.
Application for provision u/s 63 of the Bombay Tenancy and Agricultural Land Act, 1948, was made before the execution of the same deed in May, 1969	Application for permission u/s 63 of the Bombay Tenancy and Agricultural Land Act, 1948, was made.
Construction activities were started by the purchasers within 03 days of the execution of the sale deed.	Construction is started or done till date and the land continues to be agricultural land.
It was established in the court that the assessee had no intention to bring the land under cultivation after 1965-66.	Facts are on record to establish non- agricultural use by the assessee, as yet.

06.1 As regards the application of section 63 of the Bombay Tenancy and Agricultural Land Act, 1948, it is clear that the provisions relating to sale of agricultural land by an agriculturist to a person who is not an agriculturist has no relevance to the issue of taxation on the transfer of such land.

07. The reference u/s 144A dated 07/11/2016 is accordingly disposed off with directions to the AO that as the land transferred by the assessee is not a capital asset within the meaning of section 2(14)(iii)(b)(I) if the I.T. Act, 1961, the transfer will not be assessable to Capital Gain Tax.”

7.2 Ld.CIT(A) relied on the said directions of Additional Commissioner of Income Tax, Range-2, Nashik for A.Y.2014-15 in the case of the assessee and held that Department needs to follow the view taken by the AO in the assessee's case for A.Y.2014-15 in A.Y.2013-14 also.

7.2.1 The ld.CIT(A) also held that the land sold was situated in rural area at a distance of more than 8 kms from Municipal Limits, hence as per section 2(14) of the Act, it was not a capital asset and hence, no capital gain on sale of agricultural land.

7.3 In this case, Revenue has not brought on record any new facts. In the case of assessee for A.Y.2014-15, returned income has been accepted vide order dated 05.12.2016, based on the direction issued by Additional Commissioner of Income Tax, Range-2, Nashik for A.Y.2014-15. In these facts and circumstances of the case, we agree with the ld.CIT(A) that

Revenue cannot change the stand in the case of the assessee for A.Y.2013-14 when the issue involved is identical. Therefore, we uphold the order of Id.CIT(A).

7.4 Even otherwise, the Id.CIT(A) has given a finding that impugned land is at a distance more than 08 kms from Municipal Limits. We have perused the copy of the registered Agreement for Sale dated 24.10.2012 which is at page no.40 to 51 of the paper book. It is mentioned in the said agreement for sale, that the impugned land is agricultural land and purchaser is an agriculturalist. We have also perused the certificate issued by Tahsildar, Shahapur dated 12.07.2016 which is at page no.65 of the paper book. It is categorically mentioned in the said certificate that impugned land is an agricultural land and it is being used as agricultural land. It is also mentioned in the certificate that the land is at a distance of approximately 09 kms away from Shahapur Headquarters. The relevant part of the certificate is scanned and reproduced here as under:

क्र.महसूल/क-१/ट-४/ज.बा./कावि- ०७ /२०१५
दिनांक :- १२/०७/२०१६.

दाखला

श्री. अशोक सोमनाथ सोनवणे व सौ. स्मिता अशोक सोनवणे रा. प्लॉट नं. २१९, ताराकुटीर, महात्मानगर, नाशिक -४२२००७ यांचे नावावर खाली नमुद केलेले सर्व्हे नं. ची शेत जमीन दाखल असल्याचे दिसून येत आहे. मौजे शिरगांव येथील फे क्र. ६८१ व मौजे लेनाड येथील फे.क्र. १०२६ व १०२९ अन्वये मे. प्रॉस्पेक्टिव्ह इस्टेट अँड रीअॅलीटी लोजिकल सोल्युशन्स प्रा.लि. तर्फे डायरेक्टर जयदीप के. ठक्कर यांचा साठेकराचा बोजा असल्याचे दिसून येत आहे.

मौजे शिरगांव, ता. शहापुर, जि. ठाणे व मौजे लेनाड खुर्द., ता. शहापुर, जि. ठाणे येथील शेत जमीनीचा खालीलप्रमाणे आहे.

गावांचे नांव	गट नं./हिस्स. नं.	क्षेत्रफळ (हे आ प्र)	आकार(रु.पै)
मौजे-शिरगांव, ता. शहापुर, जि. ठाणे	२६२	०-६०-७	२-४७
	२६५	१-१५-८	१-७८
	२७७	०-५१-०	०-२९
	२७८	०-२६-०	०-२५
	२७९	१-१०-०	०-७९
	२८३	०-२२-०	०-२०
	२८५	०-१५-०	०-१२
	२८६	०-०८-०	०-०९
	२८७	०-४७-०	०-३१
	२९१	०-२९-०	०-३२
	२६४	०-१४-०	०-१२
	२८०	०-२१-०	०-१९
	२६३	०-६६-०	०-७५
	२९०	०-१७-०	०-१७
	२८४	०-१८-०	०-१७
मौजे-लेनाड (खुर्द), ता. शहापुर जि. ठाणे	४२/१ब	०-८०-०	१-३२
	५२/१क	१-००-०	०-८३
	५२/१ड	०-८६-४	०-५०

उपरोक्त नमुद केलेल्या शेत जमीनी आज पावेतो शेत जमिन म्हणूनच वापरात आहेत. त्याकामी वर नमुद केलेल्या सर्व्हे नं. च्या शेतीजमीनीचे सद्यस्थितीतील ७/१२ उतारे (सातबारा उतारा) आपल्या माहितीसाठी जोडत आहोत.

तसेच उपरोक्त शेतीजमीनी यांचे शहापुर मुख्यालयापासुनचे अंतर (लेनाड खुर्द) अंदाजे १२ किलोमिटर आहे. व मौजे शिरगाव येथील अंतर शहापुर मुख्यालयापासुन अंदाजे ९ किलोमिटर (नऊ किलोमिटर) आहे.

7.5 Thus, the Tahsildar certified that the impugned land is agricultural land and at distance of more than 08 kms. The Revenue has not brought on record any evidence to rebut the findings of Tahsildar.

7.5.1 Section 2(14) is reproduced as under:

(14) "capital asset" means property⁴² of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession ;

(ii).....

⁴⁵[(iii) agricultural land⁴⁶ in India, not being land situate—

(a) in any area which is comprised within the jurisdiction of a municipality⁴⁶ (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population⁴⁶ of not less than ten thousand ^{46a}[according to the last preceding census of which the relevant figures have been published before the first day of the previous year] ; or

(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette⁴⁷;

7.6 Therefore, in these facts and circumstances of the case, we agree with ld.CIT(A) that impugned land is not a capital asset as defined u/sec.2(14) of the Act. Hence, no capital gain arises. Accordingly, grounds of appeal raised by the Revenue are dismissed.

7.7 In this case the Revenue in Ground Number 1 has relied on the decision of the Hon'ble Supreme Court in the case of Smt. Sarifabibi Mohmed Ibrahim Vs. CIT [1993] 204 ITR 631 (SC). The facts pertaining to the assessee are as under :

- In the case of the Assessee the Land was an agricultural Land as per Revenue Record.
- The land is agricultural land even on 12.07.2016 i.e.much after the sale as per the certificate issued by Tahsildar in which Tahsildar has categorically stated that till today land is used for the purpose of agriculture.
- The Land has not been converted into Non-Agricultural Land even after the Sale.
- The Land is situated beyond 8 kms from the Municipal Limits.
- Agricultural operations were continuously performed on the impugned land till date of sale.
- Consideration paid as per rate applicable for Agricultural land in the area.
- No construction carried out on the impugned land even after the sale.

- *The only objection of the revenue was that the impugned land has been sold to Prospective Estate and Reality Logical solutions Pvt Ltd. However, as per the Agreement to Sale the buyer is an Agricultural company.*

7.8 *When we analyse all these facts of the case, respectfully following the Hon'ble Supreme Court decision(supra), we hold that the impugned land was an agricultural land.*

8. *Accordingly, the Ground Number 1 raised by the Revenue is dismissed."*

11 Based on the fact and circumstances of the assessee's case enumerated above and following the decision of the Co-ordinate Bench of the Tribunal in the case of ITO Vs. Smita Ashok Sonawane (supra) and in the absence of any contrary material brought on record by the Revenue to enable us to take a different view, we hold that the order of the Ld. CIT(A)/NFAC is unsustainable on merits. We, therefore, vacate the order of the Ld. CIT(A)/NFAC. Accordingly, effective grounds of appeal raised by the assessee are allowed.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 30th September, 2025.

Sd/-
(Manish Borad)
ACCOUNTANT MEMBER

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th September, 2025.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune