

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

आयकर अपील सं./ITA No.1118/SRT/2024

Assessment Year: 2013-14

(Hybrid hearing)

Dipak Chhaganlal Naik L/h Amitaben Dipak Naik 44, China Gate-2, B/hGayatri Mandir, Althan S.O, Althan, Surat- 395 017	<b>बनाम/ Vs.</b>	Income Tax Officer Ward-2(3)(1), Surat, Room No. 627, Aaykar Bhawan, Majura Gate, Surat-395 001
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AADHN 5872 L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Rajesh Upadhyay, AR
राजस्व की ओर से /Respondent by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख/Date of Hearing	28/07/2025
उद्घोषणा की तारीख/Date of Pronouncement	17/10/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUETH, 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 09.10.2024 by the National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals) [in short, "CIT(A)"] for the assessment year (AY) 2013-14, which in turn arises out of assessment order passed by the Assessing Officer (in short, "AO") u/s. 1447 r.w.s 144B of the Act on 25.05.2023.

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

*"1. Ld. CIT(A), NFAC, Delhi has erred in law and on fact to pass ex-parte appeal order by issuing four notices and that two one after another, within the period of a month. His notices could not be complied on account of sudden death of the appellant on 05/12/2023.*

2. Ld. CIT(A), NFAC, Delhi has erred in law and on fact to confirm AO's reopening of assessment under amended provisions of Section 148A of the Act which came into force w.e.f 01/04/2021.

3. Ld. CIT(A), NFAC, Delhi has erred in law and on fact to uphold addition made by the assessment unit u/s 50C for Rs.82,96,500/- being 1/3<sup>rd</sup> difference between fair market value and registered document value of agricultural land sold by the appellant vide registered sale deed number 190/2013.

4. Ld. CIT(A), NFAC, Delhi has erred in law and on fact to confirm action of the assessment unit w.r.t. appellant's claim of the exemption of Rs.56,35,000/-, ignoring the law that the land sold by the appellant is not a capital asset u/s 2(47) of the IT Act.

5. Ld. CIT(A), NFAC, Delhi has erred in law and on fact to uphold addition of Rs.79,400/- made by the assessment unit by treating agricultural income as unexplained money earned by the appellant, without specifying any section of Income-tax Act.

6. Ld. CIT(A), NFAC, Delhi has erred in law and on fact to confirm disallowance made by the assessment unit for Rs.1,10,000/- overlooking the fact that deduction u/s 80C and 80TTA are statutorily available to the appellant."

3. Vide application dated 19.03.2025 the assessee raised the additional ground, which are as follows:

"1. The Ld. CIT(A) (NFAC) erred in not holding that notice u/s.148 issued on 30.06.2021/27.07.2022 is barred by limitation as it was issued beyond the time limit surviving under the Income tax Act r.w. TOLA as well as Hon'ble Apex Court judgement in UOI vs. Rajeev Bansal reported in 469 ITR 46.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) (NFAC) erred in not holding the notice and proceedings under provisions of section 148 of the Act as invalid and bad in law without appreciating the fact that.....

(i) Notice and proceedings carried out u/s.148 are in utter violation of the prescribed procedure of faceless assessment.

(ii) Notice issued by ITO, Ward 2(3)(1), Surat on 27.07.2022 and not by FAO;

*(iii) Notice issued by ITO, Ward 2(3)(1), Surat on 27.07.2022 is without DIN is contrary to CBDT circular.”*

4. Brief facts of the case are that assessee filed return of income in ITR-2 for AY 2013-14 on 31.07.2013 declaring total income at Rs.2,94,650/-. He has shown exempt short-term capital gain of Rs.56,35,198/- on sale of agricultural land at village Bhanodara, Surat. The case was reopened as per the information that there was difference in the sale consideration and Fair Market Value (FMV) of Rs.2,56,94,500/-. Hence, provisions of Section 50C was applicable. Therefore, notice u/s 148 was issued after obtaining approval from the competent authority. In response assessee filed return on 25.11.2024 declaring total income at Rs.10,252/- wherein he had claimed exempt income of Rs.56,35,000/-. After hearing the assessee, the AO added Rs.82,96,500/- as short-term capital gain. He also disallowed exempt income of Rs.56,35,000/- on account of sale of agricultural land and added Rs.3,15,000/- as short-term capital gain. Total income was determined at Rs.89,85,550/- as against the returned income of Rs.Nil.

5. Aggrieved by the order of AO, assessee filed appeal before CIT(A). The CIT(A) issued four notices, which were not complied with. In view of the same, CIT(A) proceeded to adjudicate the appeal on the basis of submission made by assessee through appeal memo/statement of facts and material available on record. After considering the same, CIT(A) observed that the reopening of the assessment, addition u/s.50C of the Act, denial of exemptions and the initiation of penalty proceedings were all legally justified based on the

facts of the case and provisions of the Act. CIT(A), therefore, dismissed the appeal of the assessee and upheld the order of the AO.

6. Aggrieved by the order of CIT(A), assessee has filed present appeal before the Tribunal. The Ld. AR of the assessee submitted the paper book containing computation of limitation period for issue of notice u/s.148 under new regime, copy of notice u/s148 dated 30.06.2021, copy of intimation to issue of notice u/s148 with a notice issued under new regime, copy of notice u/s.148A(b), information supplied by AO and assessee's objection, order u/s148A(d), copy of notices and show cause notices issued by the AO and various other details in support of the merit of the case. The Ld. AR stated that assessee suffered from cancer disease for three years prior to his demise and he expired on 05.12.2023, i.e., during the course of appellate proceedings before CIT(A); therefore, notices issued by CIT(A) could not be complied by assessee's legal heir. Ld. AR further contended that CIT(A) has passed *ex parte* order without providing sufficient opportunities to the assessee to furnish necessary documents, therefore, re-assessment proceedings in the case of assessee be quashed and additions made by AO.

7. On the other hand, Ld. Sr. DR for the revenue relied upon the order of the lower authorities and requested to uphold the order of CIT(A). He submitted that sufficient opportunities were provided to the assessee by CIT(A).

8. We have heard both parties and perused the materials available on record. The main issue before us is whether the *ex parte* order passed by the CIT(A) on 09.10.2024 suffers from legal infirmity due to lack of sufficient opportunity to the legal heir of the deceased assessee and non-consideration of

valid and material submissions which could not be made due to demise of the assessee during pendency of appellate proceedings. It is an undisputed fact that the assessee expired on 05.12.2023, i.e., during the pendency of appellate proceedings before CIT(A). The order passed by CIT(A) is dated 09.10.2024. It is also clear that the notices were issued by CIT(A) during the period when the assessee was undergoing terminal illness and after his death, no effective opportunity was granted to the legal heir to represent the case. In our considered opinion, the *ex parte* disposal of the appeal without proper notice to the legal heir and without giving adequate time to respond violates the principles of natural justice. This is especially significant in light of the medical condition and subsequent demise of the assessee. The appellate order, thus, cannot be sustained in the eyes of law.

8.1 It is a well-established that justice should not only be done but also should appear to have been done. It had been held in a number of cases that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

8.2 The additional grounds raised by the assessee before the Tribunal pertain to jurisdictional issues, including limitation under amended Section 148 and violations of CBDT Instructions regarding DIN and faceless assessment procedure. These must be adjudicated on merits by the CIT(A) after giving opportunity to the legal heir.

8.3 In view of the above facts and in the interest of substantial justice, we are of the considered opinion that the impugned order passed by the CIT(A) is liable to be set aside. Accordingly, the order of CIT(A) is set aside and remitted

back to his file for fresh adjudication after giving reasonable opportunity to the legal heir of the deceased assessee. The appellant (legal heir) is also directed to furnish all necessary documents as may be required by the CIT(A) for effective adjudication.

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

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963  
on 17/10/2025 in the open court.

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**  
सूरत /Surat  
दिनांक/ Date: 17/10/2025  
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**

By order/आदेश से,

// True Copy //

**सहायक पंजीकार**  
**आयकर अपीलीय अधिकरण, सूरत**