

**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.71/SRT/2025**

**Assessment Year: (2012-13)**

**(Hybrid hearing)**

Bhavnaven Pravinchandrabhai Patel 16D/183/6 Shiv Shaki Bhavan, Opp. Rupli Chinema, Ram Nagar, Rander Road, Surat-395 005	<b>बनाम/ Vs.</b>	Income Tax Officer, Ward-1(3)(6), Surat, 303, Income Tax Office, Anavil Business Centre, Adajan, Surat- 395 007
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: BGFPP 0968 N</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

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	22/07/2025
उद्घोषणा की तारीख /Date of Pronouncement	15/10/2025

**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 26.05.2023 by the National Face Less Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals) [in short, 'CIT(A)'] for the assessment year (AY) 2012-13, which in turn arises out of assessment order passed by the Assessing Officer (in short, 'AO') u/s. 143(3) r.w.s. 147 of the Act on 02.12.2019.

2. The grounds of appeal raised by the assessee appeals are as under:

*"1. Ld. CIT(A), NFAC has erred in law and on facts to confirm AO's computation of capital gain at Rs.7,79,184/- ignoring the fact that appellant land was rural agricultural land as such, it is not capital asset subject to Income tax.*

*2. Ld. CIT(A), NFAC has erred in law and on fact to confirm AO's addition on account of LTCG that worked out by the AO by taking 50C value and that too without allowing deduction for Indexed Cost of Acquisition as on 01.04.2001."*

3. Vide application dated 25.04.2025, the appellant has raised additional ground, which is as follows:

*"Ld. AO has erred in law and on fact to reopen assessee's case for AY 2012-13 u/s 147 and has also erred in law to issue notice u/s 148 of the Act on incorrect facts and on borrowed satisfaction."*

4. Let us first decide as to whether the additional ground raised by the appellant could be admitted by us. Rule 11 of Income Tax (Appellate Tribunal) Rules, 1963 governs the grounds of appeal to be considered by the ITAT. The same reads as under:

***"Grounds which may be taken in appeal. –***

*11. The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule:*

***Provided*** that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground."

4.1 The Learned Sr. DR for the revenue has not raised any objection to admission of the additional ground raised by the assessee.

4.2 It is seen that no additional facts are necessary to adjudicate these additional grounds of appeal. It also goes to the root of the matter. The Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT, 229 ITR 283 (SC) held that the power of the Tribunal in dealing with appeals is expressed in the widest possible terms. The Hon'ble Court did not find any reason as to why the assessee should be prevented from raising a question before the Tribunal for the first time so long as the relevant facts are on record in respect of that item. It further observed that the power of the Appellate Assistant Commissioner in permitting assessee to raise an additional ground in accordance with law, as held in case of Jute Corporation of India Ltd. vs. CIT, 187 ITR 688 (SC), is also available to ITAT in respect of appeals pending before it. In light of the above facts and settled legal position, we admit the additional grounds raised by the assessee for adjudication along with the other grounds raised by the assessee.

5. The appeal filed by the assessee is barred by limitation by 606 days in filing of this appeal. The appellant has filed an application for condonation of the delay along with an affidavit. In the aforesaid application, it is stated by the assessee that initially her income tax matter was being handled by Advocate, Shri Kishorbhai Patel of Surat, who also appeared before the AO on behalf of assessee during assessment proceedings. He also filed first appeal on behalf of the assessee before CIT(A). Assessee further stated that service of appellate order of

CIT(A) was neither in her knowledge nor was in the knowledge of Shri Kishorbhai Patel. The fact regarding the passage of appellate order came to the knowledge of assessee only when penalty show cause notice was issued by the AO. Subsequently, on the advice of Shri Kishorbhai Patel, the case of assessee was handed over to Shri Rajesh M. Upadhyay, on 16.01.2025, who immediately prepared appeal memo and filed appeal before this tribunal. It is stated by the assessee that delay in filing appeal before the Tribunal was unintentional and that assessee is in no way benefitted on account of the delay in filing appeal.

6.1 The Ld. Sr. DR for revenue did not raise objection to the condonation request of the assessee. However, he submitted that appropriate cost may be imposed on the appellant.

6.2 After hearing both the parties, we note that delay in filing appeal by the appellant was unintentional and the appellant, anyway, does not seem to benefit from such delay. It is well settled that when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay. Hence, the delay is condoned and the appeal is admitted for hearing subject to payment of cost of Rs.5,000/- (Rupees five thousand only) to the Prime Minister's Relief Fund within 30 days from the receipt of this order.

7. Brief facts of the case are that in the instant case, information was received by the AO that an immovable property, which was situated at Block No. 228, Moje Gam Kunkani, Tal – Olpad, Surat, was sold by the assessee along with 4 co-owners for sale consideration of Rs.22,00,000/- on 09.11.2011. As per jantri rate, value of the property was of Rs.38,95,920/-, in which the appellant's share was Rs.7,79,184/-. However, the return of income for the year under consideration was not filed by the assessee. Hence, the AO reopened the case of the assessee by issue of notice u/s.148 of the Act and taking necessary approval from the PCIT-1, Surat. In response to notice u/s.148 of the Act, the appellant filed ROI declaring therein total income at Rs.22,770/- for the A.Y. 2012-13. In response to these notices issued by AO, the appellant had submitted that the land sold was an agricultural land as per Section 2(14)(iii) of the Act and was 12 km far from Surat Municipal limit. The assessee submitted a certificate cum Dakhlo of Talati cum Mantri, in support of his claim. The AO issued notice u/s.133(6) to the officer concerned of the Surat Urban Development Authority (SUDA), for providing the distance of the said land from the Surat Municipal limit. The officer of the SUDA provided the information that the land (i.e., Block No. 228, Moje Gam Kunkani, Tal – Olpad, Surat) was only 4.27 km far from the Surat Municipal limit.

7.1 The AO, therefore, issued a final show cause notice on 21.11.2019 wherein assessee was requested to show cause as to why the amount of Rs.7,79,184/- should not be treated as his capital gain from the transfer of immovable property. In its reply, assessee submitted that the sold land was an agricultural land and therefore, not a capital asset. Assessee submitted that certificate furnished by her from 'Talati cum Mantri' of village panchayat should be considered true. However, the aforesaid reply furnished by the assessee was not found tenable by the AO. The AO relied on the report provided by the officer of SUDA, as per which the concerned land was only 4.27 km far from the Surat Municipal Limit. According to AO, the land under consideration was not fulfilling the conditions laid down u/s.2(14)(iii) of the Act too be treated as agricultural land. Therefore, AO considered the said land as 'capital asset' and held that assessee failed to offer capital gain income of Rs.7,79,184/- on transfer of such capital asset. Accordingly, order u/s 147 r.w.s. 143(3) of the Act was passed by the AO on 02.12.2019, wherein total income of the assessee was determined at Rs.8,01,960/- against return income of Rs.22,770/-.

8. Aggrieved by the aforesaid assessment order dated 02.12.2019, assessee preferred appeal before CIT(A). During appellate proceedings, CIT(A) issued several notices to the assessee, however, no response was received from the

assessee. Therefore, CIT(A) adjudicated the appeal of the assessee after considering the grounds of appeal, statement of facts and the assessment order. CIT(A) concurred with the AO's view that land under consideration did not satisfy the conditions laid down u/s.2(14)(iii) of the Act for an agricultural land. He, therefore, upheld the decision of the AO, vide his order dated 26.05.2023.

9. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The Ld. AR of the assessee submitted the paper book containing copy of ITR and computation of income for AY 2012-13, copies of submission made in the assessment proceedings, copy of certificate of Kunkni Gram Panchayat dated 20.05.2019, village Kunkni data downloaded from website of Govt. of Gujarat, copy of registered sale deed, copy of gram namoona in Form 7/12, copy of SBI pass book and case laws relied upon. The Ld. AR of the assessee stated that the sold land is located in 'Kunkni' village, which is a gram panchayat and Kunkni village has a total population of 856 people. The Ld. AR contended that the sold land was not a capital asset and sale consideration received on sale of such land was, therefore, shown in the ROI as an exempt income u/s.2(14)(iii) of the Act. Ld. AR stated that certificate furnished by the assessee was issued by 'Talati cum Mantri' of village panchayat and the same should be considered true. Ld. AR

further contended that SUDA did not have any right to certify the distance of farm land from city boundary.

10. 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).

11. We have heard both the parties and perused the materials on record carefully. The core issue in dispute is whether the land sold qualifies as “rural agricultural land” and is, therefore, excluded from the definition of “capital asset” under section 2(14)(iii) of the Act. Section 2(14)(iii)(b) states that agricultural land situated within 8 km from municipal limits is a capital asset. In the instant case, the assessee filed a certificate issued by the Talati cum Mantri of the Kunkni Gram Panchayat, certifying that the subject land was located 12 km from the nearest municipal limits of Surat. On the other hand, Ld. Sr-DR submitted that land is only 4.270 km from the Surat Municipal limit. We find that the CIT(A) has confirmed the addition due to non-compliance by appellant to his notices. Therefore, without going into the merits of the case and due to the fact that the appellant could not put up an effective representation before CIT(A), we are of the considered view that one more opportunity should be given to appellant to represent her case before CIT(A). Hence, the matter is remitted back to the file of CIT(A) for deciding the issue afresh after granting reasonable opportunity of hearing to the appellant. The appellant may raise the additional ground which

should be considered by CIT(A) in accordance with law. The appeal is allowed for statistical purposes.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes in terms indicated above.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963  
on 15/10/2025 in the open court.

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**  
सूरत /Surat  
दिनांक/ Date: 15/10/2025  
Dkp Outsourcing Sr.P.S\*

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

**आदेश की प्रतिलिपि अग्रेषित/ 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 आधिकरण, सूरत**