

**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.508/SRT/2023**

**Assessment Year: (2014-15)
(Hybrid hearing)**

Suresh Ranchhodbhai Tandel 8/211, Parkota Street, NaniDaman,Daman-396 210	बनाम/ Vs.	Income Tax Officer, Ward-Daman-396 210
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ACVPT 6024 G		
(Appellant)		(Respondent)

निर्धारिती की ओर से /Appellant by	Shri P.M. Jagasheth, CA
राजस्व की ओर से/Respondent by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख /Date of Hearing	23/07/2025
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 26.06.2023 by the National Face Less Appeal Centre (NFAC),Delhi/Commissioner of Income-tax (Appeals) [in short, 'CIT(A)'] for the assessment year (AY) 2014-15, which in turn arises out of assessment order passed by the Assessing Officer (in short, 'AO') u/s. 143(3) of the Act on 14.12.2016.

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

"1. On the facts and circumstances of the case and in law on the subject, the Ld. CIT(A) has erred in confirming the action of the AO in making the addition of Rs.1,40,26,640/- on account of long term capital gain on land sold.

2. On the facts and in the circumstances of the case as well as the law on the subject, the Ld. CIT(A) has erred in confirming the action of the AO in referring to the DVO for valuation for cost of acquisition as on 01.04.1981 and value adopted as per DVO valuation report.

3. On the facts and in the circumstances of the case as well as the law on the subject, the Ld. CIT(A) has erred in confirming the action of the AO in taxing capital gain on sale of the non agriculture land owned by the Appellant by taking cost of agriculture land.

4. On the facts and in the circumstances of the case as well as the law on the subject, the Ld. CIT(A) has erred in confirming the action of the AO in non accepting the cost of acquisition of non agriculture land as the commercial activities were running on the said piece of land.

5. On the facts and in the circumstances of the case as well as the law on the subject, the Ld. CIT(A) has not offered adequate opportunities to hear the case and hence the case may please be set aside and restored back to the CIT(A) or AO.

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

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

3. Vide application dated 22.07.2025, the additional ground raised by the assessee are as follows:

"1. On the facts and in the circumstances of the case and in accordance with the law, I would like to inform that I have invested the sale proceeds of that land towards the construction of a new property situated at Plot No. 38, Parshi Colony, Devka, Nani Daman. However, while filing the return of income, the net capital gain was in capital loss and accordingly, the claim under various sections of 54 of the I.T. Act was not made before the Ld. Assessing Officer.

2. It is therefore, respectfully prayed that the additional ground and the claim under various sections of 54 of the I.T. Act may kindly be admitted and the ground limited to this be restored to file of AO for due verification.

3. I am filing herewith the Additional ground of appeal which may kindly be taken on record and oblige."

4. Let us first decide as to whether the additional ground raised by the appellant could be admitted by us. The Rule regarding grounds of appeal to be considered by ITAT is Rule 11 of Income Tax (Appellate Tribunal) Rules, 1963. 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 are of the considered opinion that the additional grounds raised by the assessee deserve to be admitted for adjudication. The same is accordingly admitted and would be decided in course of this order.

5. Brief facts of the case are that the assessee is proprietor of M/s. Radhika Packaging and shown business income from manufacturing of corrugated box during the year under consideration. Assessee filed ROI on 30.09.2014 declaring total income at Rs.15,94,250/-. The case of the assessee was selected for scrutiny through CASS. Assessee was requested to furnish necessary details on relevant issues, vide notices u/s.143(2) and 142(1) of the Act. In compliance, assessee furnished details/documents from time to time through his Authorized Representative. During assessment proceedings, it was noticed that the assessee alongwith his brother, had sold ancestral agriculture land admeasuring 8770 square metres bearing Survey no. 370/2A of Village Kachigam, Daman to M/s. Flair Writing Instruments on 12.12.2013, for sale consideration of Rs.2,84,30,000/-. Besides, the assessee had also sold other piece of ancestral agriculture land bearing Survey No. 370 2-A of village Kachigam alongwith his brother, for Rs.65,70,000/- to Smt. Manjula V. Rathod and Nirmala K. Rathod

admeasuring 2030 square metres on 12.12.2013. While filing the return of income, the assessee declared long term capital loss on sale of property.

6. On perusal of the details/documents furnished by the assessee, it was noticed by the AO that fair market value of non-agricultural land (as on 01.04.1981) was considered as the cost of the land. The AO, therefore, issued, show cause notice stating that as per his enquiry from office of the Sub Registrar, the value of agricultural land as on 01.04.1981 was Rs.1.75 per square metre and he calculated the indexed cost at Rs.88,735/- (50% of Rs.1,77,471/-) and accordingly, long-term capital gain of Rs.1,74,11,265/- was proposed to be taxed in the hands of the assessee. The assessee replied to the said show cause notice stating that the land sold during the year was a non-agricultural land and fair market value of property as on 01.04.1981 should also be of a non-agricultural land. Assessee further submitted that as per the records of the Sub Registrar, the market value of a non-agricultural land was in the range of Rs.300/- to Rs.400/- and accordingly, he had taken the mean rate of Rs.350/-. However, the AO did not accept the submissions of the assessee and based on the rate of agricultural land of Rs.68.50 per sq. meter calculated by the Departmental Valuation Officer (DVO) in the case of assessee during the AY 2008-09 and calculated the LTCG at Rs.1,40,26,640/-. The AO added the same to the total income of the assessee and

passed the assessment order u/s.143(3) of the Act on 14.12.2016, determining the total income of the assessee at Rs.1,56,20,890/-.

7. Aggrieved by the aforesaid assessment order dated 14.12.2016, assessee preferred appeal before CIT(A). During appellate proceedings, in respect of ground of appeal raised by the assessee against the action of AO in not taking the non-agricultural land price as on 01.04.1981 to compute the capital gain on sale of land properties, the CIT(A) observed that assessee himself had furnished the letter dated 01.04.2008 issued by the office of Collector, which had converted the land from agriculture to non-agriculture by granting permission under section 32 w.e.f. 01.04.2008. In view of the same, question of treating the land as non-agricultural land did not arise.

8. CIT(A) further observed that assessee had alleged that the AO erred in not accepting the cost of acquisition of non-agricultural land even when commercial activities were running on that land. In this regard, CIT(A) held that it is undisputed that land in question was agricultural land as on 01.04.1981 which was subsequently converted into non-agricultural land from 01.04.2008. It was further held that assessee had not brought anything on record either before AO or during appellate proceedings that land was non-agricultural (NA) land as on 01.04.1981 or any commercial activity was running on land as on 01.04.1981.

Therefore, the ground of appeal raised by the assessee in this regard was disallowed by the CIT(A).

9. Regarding the issue of rate adopted by the AO of Rs.68.50/- per sq. meter as on 01.04.1981, CIT(A) noticed that the assessee himself requested vide order sheet entry dated 15.01.2016 to take this rate for the purpose of computing capital gain. It was also noticed that during assessment proceedings, assessee submitted copy of valuation report of the DVO wherein rate was estimated at Rs.68.50 per sq. meter and this report was binding. In view of the same, CIT(A) held that the AO had rightly adopted rate of Rs.68.50 per sq. meter in computing LTCG on sale of land. The CIT(A), therefore, dismissed the appeal of the assessee.

10. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The Ld. AR of the assessee submitted that the action of the AO in not appreciating the facts and computing the cost of agricultural land for non-agricultural land is not acceptable since it is an admitted law of equity that comparison should always be done of the similar items with similar facts and cannot be done with other items. Hence, the action of the AO in adopting the fair market value of agricultural land is bad in law and the claim of long-term capital loss made by the assessee should be allowed and the disallowance made by the AO be deleted. The Ld. AR further stated that CIT(A) erred in law by not appreciating that in the case of assessee the dispute is a question of law that

whether the value of non-agricultural land should be considered or value of non-agricultural land should be considered, as a fair market value, particularly when the Collector has permitted conversion of the land from agricultural to non-agricultural with effect from 01.04.2008. The Ld. AR further submitted that the valuation of agricultural land should be considered from the date when it became the capital asset. Accordingly, in the instant case, the valuation as on the date of conversion, i.e., 01.04.2008, should be considered and not as on 01.04.1981, as considered by the AO in the assessment order. The Ld. AR submitted that the rate estimated by the Sub-Registrar of Rs.130 to Rs.135/- per sq. meter may be accepted and LTCG may be computed accordingly.

11. 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 the impugned agricultural land was inherited by the assessee and hence, the value as on 01.04.1981 has been rightly adopted as cost of acquisition by the AO for the purpose of computing LTCG.

12. We have heard both the parties and perused the materials available on records. The key issues for adjudication before us are: (i) whether the AO and CIT(A) erred in treating the land as agricultural as on 01.04.1981 despite assessee's claim of it being non-agricultural or used for commercial activity; (ii) whether the adoption of Rs. 68.50 per sq. mtr. as FMV as on 01.04.1981 is

justified; (iii) whether the assessee is entitled to deduction u/s 54 of the Act on account of reinvestment of capital gains in a residential house property and (iv) whether proper opportunity of hearing was provided by the CIT(A), and if not, whether matter should be remanded.

12.1 Nature of land and FMV: We find that both lower authorities have adopted Rs.68.50 per sq. metre relying on a DVO report for AY 2008-09. There is no dispute that the impugned land was inherited agricultural land of the appellant. Initially, the AO proposed rate of Rs.1.75 per sq. meter based on the rate provided by the Sub-Registrar. Subsequently, the rate was enhanced to Rs.68.50 per sq. meter based on the valuation report submitted by the appellant himself which is at pages 38 to 46 of the paper book submitted by the Ld. AR of the appellant. The appellant himself had submitted it before the AO. The mode of computation of capital gain is provided in section 48 of the Act. The cost of the acquisition of the asset and cost of improvement along with expenditure incurred for transfer of the asset are to be reduced from the full value of consideration received as a result of transfer of the capital asset. Since the land was inherited by the appellant, the AO has rightly adopted the value as on 01.04.1981. The character of the land was agricultural land as on 01.04.1981, which cannot be changed to suit the requirement of the appellant. The fact that it was subsequently consider fit for commercial or industrial use cannot by themselves

change the character of land on the threshold date of 01.04.1981. Be that as it may, the AO has been fair in adopting the value of Rs.68.50 per sq. meter on the basis of valuation report submitted by the appellant himself. Hence, no infirmity could be found in the orders of lower authorities. The ground is accordingly, dismissed.

12.2 **Claim u/s 54 of the Act:** The appellant has raised additional ground and claimed exemption u/s 54 of the Act. The additional ground has been admitted as per the discussion in para-4 to 4.2 of this order. The appellant has stated that sale consideration from the land sale were invested towards construction of a new property at Nani Daman. However, while filing the return, the appellant did not claim deduction u/s 54 of the Act because there was long-term capital loss as per the computation of income. Since this claim involves examination of fulfilment of the conditions of Section 54 of the Act and verification of factual aspects such as date of investment, quantum, possession, nature of property etc., which was not undertaken by the lower authorities at the time of assessment or appellate proceedings, we deem it proper to remit the matter back to AO for detailed examination and verification in accordance with law after providing reasonable opportunity of being heard to appellant. This ground is allowed for statistical purposes.

13. The appellant has also raised a ground regarding inadequate opportunity provided by the CIT(A). Since we have restored the matter back to the file of AO for detail examination and verification of the impugned issue, the appellant may make necessary submission before the AO in this regard. The AO shall consider the same before passing the fresh order.

14. 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,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत