

**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.866/SRT/2024

Assessment Year: (2011-12)

(Hybrid hearing)

Nanubhai Premjibhai Bambharolia Plot No/.147/148, H-1, Kalpdeep Chharwada Road, GIDC, Vapi-396 195	बनाम/ Vs.	Assistant Commissioner of Income- tax, Circle-Vapi, 7 th Floor, Room No.704, Daman Road, Chala, Vapi- 396 191
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABOPB 8282 A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri A. Gopalakrishnan Aiyar, CA
राजस्व की ओर से/Respondent by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख /Date of Hearing	31/07/2025
उद्घोषणा की तारीख /Date of Pronouncement	28/10/2025

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 18.06.2024 by the National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals) [in short, 'CIT(A)'] for the assessment year (AY) 2011-12, 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 18.03.2016.

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

"1. On appreciation of the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in not adjudicating the additional ground of appeal(s) raised by the appellant during the course of appellate proceedings. The Learned Commissioner of Income Tax (Appeals) ought to have admitted the additional ground of appeal and adjudicated the same in accordance with law.

2. On appreciation of the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the learned Assessing Officer in re-opening the assessment u/s 147 of the Act without a speaking order.

3. On appreciation of the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the learned Assessing Officer in considering the rural agriculture land as a capital asset contrary to the definition of agricultural land u/s 2(14) of the Act. The action of the Learned Commissioner of Income Tax (Appeals) is contrary to the facts of the case and law and deserves to be deleted.

4. On appreciation of the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the learned Assessing Officer in considering the Jantri rate of industrial land instead of considering the Jantry rate of agricultural land for determining the stamp duty value of the immovable property under section 50C of the Act. The action of the Learned Commissioner of Income Tax (Appeals) is contrary to the facts of the case and law and deserves to be deleted.

*5. On appreciation of the facts and circumstances of the case and law, the Learned Commissioner of Income Tax (Appeals) ought to have considered the correct facts of the case and the **Circular No. 551** dated 23.01.1990 issued by the Hon'ble Central Board of Direct Taxes in this regard and computed the tax liability of the appellant correctly as per law.*

6. On appreciation of the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in not granting an opportunity of hearing through Video Conference as requested by the appellant during the course of appellate proceedings resulting in denial of natural justice to the appellant.

7. The Appellant craves leave to add, amend, modify or alter the above grounds of appeal at any stage of appellate proceedings.

The Appellant humbly prays that the appeal be allowed in toto."

3. Brief facts of the case are that the assessee filed his return of income for the AY 2011-12 on 27.07.2011 declaring total income at Rs.1,56,41,700/-. As per

information received by the department, during the year under consideration, the assessee sold lands situated at various places of Moje Tukwada, Tal. Pardi for sale consideration of Rs.1,00,00,000/- to M/s. Mipro Solution Pvt. Ltd. The stamp duty value of the impugned land was Rs.2,09,90,840/-. In the return of income filed for the AY 2011-12, the assessee declared value of the said land at Rs.1,00,00,000/- while computing the capital gain arising from this transaction. As per provisions of Section 50C of the Act, he should have taken value of sold land at Rs.2,09,90,840/- and hence capital gains of Rs.1,09,90,840/- were not declared in his return of income for the year under consideration.

3.1 On the basis of this information, the case of the assessee was reopened u/s.147 of the Act after following due procedure and notice u/s.148 of the Act was issued to the assessee on 02.03.2015. During the assessment proceedings, notices u/s.142(1) of the Act and show cause notice were issued to the assessee. In compliance thereof, appellant submitted that the impugned land sold by him was an agricultural land whose stamp duty value was Rs.24,22,020/- only, however, he sold it for a consideration higher than the stamp duty value. Therefore, as per appellant provisions of Section 50C of the Act were not attracted in his case. Appellant further submitted that since the buyer of the land, i.e., M/s. Mipro Solution Pvt. Ltd. was a company, the Sub Registrar office

levied stamp duty by considering Industrial Land rate on value of Rs.1,51,13,405/- and not on Rs.2,09,90,840/-. The AO took into consideration the reply of the assessee that initially the land was valued at Rs.2,09,90,840/- by Sub Registrar, Pardi. However, on appeal the adjudicating authority revalued the stamp duty value of the impugned land at Rs.1,51,13,405/-. The assessee also submitted a letter from Sub Registrar, Pardi dated 18.03.2016 wherein the said property was revalued at Rs.1,51,13,405/- and differential stamp duty of Rs.2,50,560/- was paid by the buyer of the land. The assessee did not request for referring his case for valuation to the Valuation Office as specified in Section 50C of the Act. Therefore, as per provisions of Section 50C of the Act, the difference between Stamp Duty value of Rs.1,51,13,405/- and actual sale consideration of Rs.1,00,00,000/-, i.e. Rs.51,13,405/- was added by the AO to the total income of the assessee for the year under consideration under the head long-term capital gain. Accordingly, assessment order u/s.147 r.w.s. 143(3) of the Act was passed by the AO on 18.03.2016 determining total income at Rs.2,07,55,110/-.

4. Aggrieved by the order of AO, assessee preferred appeal before CIT(A). CIT(A) after perusing the written submissions filed by assessee in support of his grounds of appeal, upheld the order of the AO and dismissed the appeal of the assessee. CIT(A) passed the appellate order u/s.250 of the Act on 18.06.2024

without adjudicating additional ground No.1 and 2 filed on 17.03.2017 and 07.05.2017. Further aggrieved by the order of CIT(A), assessee has filed the present appeal before the Tribunal.

5. The Ld. AR of the assessee has filed paper book and submitted that reopening of the assessment on the basis of incorrect facts or wrong facts is bad in law. The agricultural land situated at a rural area not specified in any of the villages as per the Notification No.9447 dated 06.01.1994 is specifically excluded from the definition of capital asset and capital gains arising from the sale were not chargeable to tax. He contended that agricultural land sold to a non-agriculturist do not change the characteristic of the said land on the date of sale for the purpose of taxation. He has also submitted that where assessee sold agricultural land and value of consideration was more than jantri value applicable for agricultural land, assessee was not liable to be taxed u/s 50C of the Act. He also submitted that mere admission on part of assessee with respect an addition or disallowance in its return of income would not *ipso facto* bar an assessee from claiming an expenses or disputing an income, if it is otherwise permissible under law. He also submitted that if an assessee under a mistake or not being properly instructed, is over assessed, the income-tax authorities are required to ensure that only legitimate tax is levied on the assessee. He also submitted that estoppel

or any other equitable doctrine is not applicable to Income-tax Law. The Ld. AR has relied on various decisions in support of the contentions made as above. The Ld. AR further submitted that assessee had raised additional grounds before the CIT(A), which were not adjudicated by the CIT(A). He should have admitted the additional ground and adjudicated the same as per law. Therefore, the Ld. AR submitted that the CIT(A) passed the order u/s 250 of the Act on 18.06.2024 without hearing the assessee in violation of the principles of natural justice.

6. On the other hand, Ld. CIT-DR relied on the orders of the lower authorities.

7. We have heard both the parties and perused the materials available on record. We have also deliberated the case laws relied upon by the Ld. AR. In ground Nos. 1 and 2 the appellant has challenged the order of CIT(A) in not adjudicating the additional grounds raised by the appellant during the course of appellate proceedings. He submitted that the CIT(A) erred in confirming the action of the AO in reopening the assessment u/s 147 of the Act without passing a speaking order. We have perused the records and find that assessee had raised two additional grounds vide letters dated 17.03.2017 and 07.05.2024. The same were as under:

“ Additional Ground No.1

On appreciation of the facts and circumstances of the case and interpretation of the law, the learned assessing office has erred in re-opening the assessment u/s 147 of the Act. The action of the learned assessing officer is not in accordance with law and hence the re-assessment proceedings deserve to be quashed in toto”

Additional Ground No.2

“On appreciation of the facts and circumstances of the case and law, the learned assessing office ought to have considered the correct facts of the case and law while framing the assessment order. The learned assessing ought to have considered the Circular No.551 dated 23-1-1990 issued by the honorable Central Board of Direct Taxes in this regard and computed the tax liability of the appellant correctly as per law.”

7.1 It is clear that these two grounds were raised by the appellant after the appeal was instituted on 13.06.2016 before the CIT(A) and passing of the appellate order on 18.06.2024. Therefore, the additional grounds were very much before the CIT(A) during the appellate proceedings. However, he has not mentioned anything about the additional grounds in the appellate order. He has also neither admitted nor rejected nor adjudicated the additional grounds as per law. The Hon’ble Supreme Court in case of Jute Corporation of India Ltd. vs. CIT 187 ITR 688 (SC) has held that the powers of CIT(A) is coterminous with that of the AO, and there is no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the AO. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise, an appellate authority while hearing the appeal against the sub-ordinate authority, has all the powers which the original authority may have in deciding the question before it

subject to the restriction or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the sub-ordinate authority may have in the matter. There is no good reason to justify curtailment of the power of CIT(A) in entertaining an additional ground raised by the assessee in seeking modifications of the order of assessment passed by the AO. It is, therefore, clear from the above order that the power of the CIT(A) is coterminous with that of AO and he is vested with all the plenary powers of the AO. We find that the issue raised by the appellant is a legal and jurisdictional issue for which no additional facts were needed. All the facts related to the issue in the additional grounds were available on record. There is no reason as to why the ratio of the decision of the Hon'ble Supreme Court cited supra is not applicable to the instant case. Therefore, the CIT(A) was clearly in error not adjudicating the additional grounds as per law. Accordingly, the order of CIT(A) is set aside with direction to adjudicate the additional grounds as per law after providing reasonable and adequate opportunity of being heard to the appellant. The submission made by the Ld. AR may also be considered together with the jurisdictional and legal grounds raised in the additional grounds. Since, we have remitted the file back to AO for *de novo* adjudication, the other grounds are not adjudicated. We make it

clear that we have not expressed any opinion on the merits of the case and the CIT(A) shall decide the same in accordance with law.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 28/10/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 28/10/2025
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 अधिकरण, सूरत