

**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.52/SRT/2024

Assessment Year: 2015-16

(Hybrid hearing)

Kirit Babubhai Jhaveri, 22, Zaveri Bungalow, Opp – Meghna Park, City Light Road, Surat – 395007	vs.	ACIT, Circle – 2(2), Surat
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AABPZ4942P		
(Appellant)		(Respondent)

Appellant by	Shri Yogesh B. Shah, AR
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	18/09/2025
Date of Pronouncement	03/12/2025

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 13.11.2023 by the Commissioner of Income-tax (Appeals), [in short, "the CIT(A)"] for the assessment year (AY) 2015-16, which in turn arises out of assessment order passed by the Assessing Officer (in short, 'AO') u/s. 143(3) of the Act on 21.12.2017.

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

“(1) The Ld. CIT(A), NFAC, Delhi has erred in disallowing Rs.3,55,200/- being the indexed cost of improvement from the sale proceeds of land situated at Dumas. On the facts and in the circumstances of the case the said expenses be allowed as cost of improvement from long term capital gain on sale of land at Dumas.

(2) The Ld. CIT(A) has erred in disallowing the claim u/s.54 of Rs.72,42,950/- being the cost of further construction to make the house property habitable for dwelling. On the facts and in the circumstances of the case, the said expenses to be allowed on merits of the case.

(3) The Ld. CIT(A) has erred in not considering the agreement for purchase of agricultural land at Alura in absence of registered document (now the said document has been registered). On the facts and in the circumstances of the case, exemption u/s.54B of Rs.30,00,000/- to be granted on merits of the case.

(4) In consideration of ground no. 1,2 and 3, the addition of Rs.83,13,033/- which is based on above 3 grounds is prayed to be deleted in the interest of justice.

(5) Interest u/s.234A, 234B, 234C should not be charged on the facts and in the circumstances of the case. The order of CIT(A) is silent on this ground.

(6) The Ld. AO has erred in initiating penal actions u/s.271(1)(c). On the facts and in the circumstances of the case, the said penal actions u/s.271(1)(c) should not be initiated.

(7) Your appellant further reserves right to add, amend, alter, subsist or delete any of the above said ground at the time of hearing of this appeal or from time to time."

3. During the course of hearing, appellant filed an application dated 14.04.2025, seeking admission of additional evidence in the case assessee for AY 2015-16. This additional evidence pertains to affidavit obtained by the appellant regarding the purchase of agricultural land at Alura for Rs.30,00,000/- from the land owners.

3.1 The appellant submitted that during the assessment proceedings, evidence regarding purchase of agricultural land could not be submitted as the landlord of the agricultural land was out of India. As the deed of sale could not be executed, therefore, only draft sale deed was submitted before AO which was unsigned. Consequently, deduction u/s.54B of the Act claimed by the appellant was not allowed by the AO in the absence of evidence of sale deed. Therefore, the

appellant requested to admit this additional evidence. The appellant has submitted that aforementioned evidences go to the root of the matter and is essential for proper adjudication of the issue in dispute.

4. The Ld. Sr. DR for the revenue opposed the admission of additional evidence, stating that sufficient opportunity had been granted during assessment and appellate proceedings.

5. We have considered the contentions of both the parties and perused the material on record. After careful examination, we find that the additional evidence sought to be filed is relevant and crucial for proper adjudication of the issue regarding claim of deduction u/s.54B of the Act made by the appellant. The assessee has explained that during the assessment proceedings, evidence regarding purchase of agricultural land could not be submitted as the landlord of the agricultural land was out of India. At the same time, the evidence admittedly goes to the root of the matter regarding the disallowance of deduction of Rs.30,00,000/- claimed by the appellant u/s.54B of the Act. This evidence is vital for verifying the claim of deduction made by the appellant u/s.54B of the Act. In the interest of justice and fair play, we are of the considered opinion that the additional evidence ought to be admitted. Accordingly, the additional evidence filed by the assessee under Rule 29 of the ITAT Rules is admitted.

6. Brief facts of the case are that the assessee had filed its return of income for the AY 2015-16 on 08.06.2016 declaring total income at Rs.16,10,120/-. The case of the assessee was selected for scrutiny through CASS and notices u/s.143(2) and u/s.142(1) of the Act were issued requesting the assessee to submit information/details on the relevant issues. In their compliance, assessee furnished the relevant details and submissions.

7. On perusal of the computation of income and the details furnished by the assessee, it was seen that the assessee had sold immovable property situated at S. No. 128, TPS No.80, F.P. No. 142, Dumas, Tal: Choryasi, Surat during the year for total consideration of Rs.3,29,54,100/-. The assessee had sold the said property with another co-owner and received Rs.1,64,77,050/- from the total sale consideration and worked out capital gain on the same. Against the long-term capital gains (LTCG) calculated, the assessee claimed deduction u/s.54B of the Act against purchase of the agricultural land and deduction u/s.54F of the Act was claimed against the purchase of residential house. The details of LTCG working and the exempt capital gain shown by the assessee are as under:

<i>Date of sale of property</i>	<i>04.07.2014</i>
<i>Assessee's share in total sale consideration</i>	<i>Rs.1,64,77,050/-</i>
<i>Less: Indexed cost of acquisition claimed</i>	<i>Rs.31,96,897/-</i>
<i>Cost of improvement claimed</i>	<i>Rs.3,55,200/-</i>
<i>Exemption claimed</i>	<i>Rs.1,13,14,829/-</i>
<i>Capital gain shown in ROI</i>	<i>Rs.16,10,124/-</i>

8. The AO further noticed that the assessee submitted the copy of valuation report, therefore, indexed cost of acquisition was allowed to the assessee of Rs.31,96,897/-. However, the assessee did not furnish any bills or vouchers for availing the benefit of cost of improvement of Rs.3,55,200/-. Besides, in support of the claim of deduction u/s.54B of the Act, the assessee furnished undated draft sale deed, which was unsigned and unregistered. Accordingly, the AO assessed/computed the LTCG as under:

<i>Date of sale of property</i>	<i>04.07.2014</i>
<i>Assessee's share in total sale consideration</i>	<i>Rs.1,64,77,050/-</i>
<i>Less: Indexed cost of acquisition claimed (as per valuer's report)</i>	<i>Less: Rs.31,96,897/-</i>
<i>Cost of improvement (not allowed in absence of supporting evidence)</i>	<i>Less: Nil</i>
<i>Less: Deduction allowed u/s.54F (Rs.32,00,000/- + Rs.1,57,000/- = Rs. 33,57,000/-)</i>	<i>Less: Rs.33,57,000/-</i>
<i>Less: Deduction u/s.54B</i>	<i>NIL</i>
<i>Long Term Capital Gain</i>	<i>Rs.99,23,153/-</i>

9. Assessee had declared capital gain of Rs.16,10,124/- in his return of income, therefore, balance LTCG of Rs.83,13,033/- (99,23,153 – 16,10,124) was added to the total income of the assessee. Accordingly, order u/s.143(3) of the I T Act was passed on 21.12.2017 and the total income of the assessee was determined at Rs.99,23,150/-.

10. Aggrieved by the order of AO, assessee preferred appeal before CIT(A). During appellate proceedings, CIT(A) issue several notices to the assessee, however, assessee did not furnish any reply even once to substantiate the grounds

of appeal taken up by him. In view of the same, the CIT(A) dismissed the appeal of the assessee.

11. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The Ld. AR of the assessee submitted that the cost of improvement of Rs.3,55,200/- has been claimed on account of expense incurred for compounding wall, leveling and repairing. The Ld. AR further stated that on page No. 14 of the sale deed executed on 04.07.2014, there is a photograph of the said property in which it is clearly visible that there is a door and compound wall in the said land which proves that the cost of improvement claimed by us in the return is genuine. Therefore, same may be allowed from the sale consideration. The Ld. AR further alleged that the CIT(A) erred in disallowing the claim u/s.54 of Rs.72,42,950/- being the cost of further construction to make the house property habitable for dwelling, therefore, the said expenses may be allowed on merits of the case. Besides, Ld. AR requested to allow deduction of Rs.30,00,000/- claimed u/s.54B of the Act on account of purchase of agricultural land particularly in view of submission of affidavit obtained by the appellant regarding the purchase of agricultural land at Alura for Rs.30,00,000/- from the land owners, as additional evidence before the tribunal.

12. The Ld. Sr. DR relied upon the orders of the lower authorities and requested to uphold the order of the CIT(A).

13. We have heard both the sides and perused the material available on record. The appellate order clearly reveals that multiple notices were issued by the CIT(A) and the assessee failed to respond at all, resulting in decision solely on the basis of assessment order. It is trite law that the CIT(A) is the first adjudicating authority and his powers are co-terminus with that of the AO. Reliance may be placed on decision of Hon'ble Supreme Court in case of CIT v. Kanpur Coal Syndicate (53 ITR 225, SC) and Jute Corporation of India Ltd. v. CIT (187 ITR 688, SC). Thus, CIT(A) is empowered to examine the entire matter afresh, call for additional particulars, make inquiries, enhance assessment, etc. An ex-parte dismissal without adjudicating the issues on merits is contrary to the mandate of the Act. As per Section 250(6) of the Act - the order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision. Therefore, the order of CIT(A) is not sustainable in law.

13.1 All three major issues raised by the assessee, i.e., cost of improvement of Rs.3,55,200/-, claim of deduction u/s.54F of the Act for further construction and claim of deduction u/s.54B of the Act on account of purchase of agricultural land, require detailed factual verification and examination of documents, site-conditions, evidences and cross-verifications. The appellant has also filed additional evidence for the first time, which was not before the AO or CIT(A).

Therefore, we are of the considered view that the matter requires fresh adjudication by the CIT(A).

13.2 We also take note that despite several opportunities, the assessee failed to participate in the proceedings before the CIT(A). Such non-cooperation results in unnecessary wastage of judicial time and contributes to pendency of appeals. Given the clear negligence, we deem it appropriate to impose a cost of Rs.10,000/- (Rupees Ten Thousand only) on the assessee. The cost shall be paid to the Prime Minister's National Relief Fund (PMNRF) within 30 days from the date of receipt of this order and proof of such payment shall be produced before the CIT(A) during the remand proceedings.

14. In view of the above discussion, the entire matter is restored to the file of the CIT(A) for fresh adjudication. The CIT(A) shall decide all issues strictly on their own merits based on evidence and law. The assessee shall be afforded reasonable opportunities of being heard. The assessee is directed to submit explanation and evidence as needed by the CIT(A) by not seeking adjournments without valid reasons.

15. We hereby clarify that the CIT(A) shall adjudicate the appeal afresh independently of and uninfluenced by any observations made by the Tribunal in this order, which have been rendered only for the purpose of remand.

16. In the result, the appeal is allowed for statistical purposes, subject to the of cost of Rs.10,000/- (Rupees Ten thousand only) credit to the “**Prime Minister’s Relief Fund.**”

Orders are pronounced under provision of Rule 34 of ITAT Rules, 1963 on 03/12/2025.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 03/12/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TREU COPY //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat