

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 1185/SRT/2025
(Assessment Year: 2015-16)

Narottambhai Chhotubhai Patel, 152, Bangali Faliyu, At & Post Tadkeshwar, Tal: Mandvi, Dist. Surat, Surat-394170 [PAN : AXSPP 6169 L]	Vs.	Income Tax Officer, Ward 2(3)(1), Surat
(Appellant)	..	(Respondent)
Appellant represented by :	Shri Nitin Lakkad, CA	
Respondent represented by:	Shri Ashish Kumar, Sr. DR	
Date of Hearing	23.01.2026	
Date of Pronouncement	30.01.2026	

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-

Delay condoned.

This appeal has been filed by the assessee against the order dated 06.11.2024 passed by the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the "Ld. CIT(A)"), under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for Assessment Year 2015-16.

2. The assessee has raised following grounds of appeal:-

"1) The Ld. CIT(A) has grievously erred in dismissing the appeal solely on the basis of Section 249(4)(b) of the Income Tax Act, on the ground that the assessee had not paid any advance tax, without duly considering the facts stated in the Statement of Facts. As per the computation of income for the year under consideration (attached herewith), the assessee is in fact eligible for a refund of Rs 64,800 after payment of self assessment tax. It is therefore respectfully submitted that the appeal may kindly be admitted and allowed in the interest of natural justice, providing the assessee a fair opportunity of being heard.

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2) *The Ld. Assessing Officer has erred in law and on facts by treating the capital gain as Short Term Capital Gain (STCG), whereas the transaction in question clearly pertains to Long Term Capital Gain (LTCG). The addition made on this incorrect basis is therefore unjustified and liable to be deleted.*

3) *The learned AO has grievously erred in passing the order without considering the cost of transfer, cost of acquisition and cost improvement and treating the said long term capital gain as a short term capital gain which is invalid and bad in law and liable to be quashed.*

4) *The Hon'ble ITAT is prayed to give a chance to produce all the evidences and information before him which could not be produced at AO level as well as CIT(A) so that assessee gets full justice as taxing statutes demand tax on earned income which are taxable and not on income which was never earned."*

3. The brief facts of the case are that the assessee is an individual, stated to be a farmer, who also earned salary income. The assessee did not file return of income for the assessment year under consideration. Based on information received regarding sale of immovable property for a consideration of Rs.85,62,600/-, proceedings u/s 147 r.w.s. 144 of the Act were initiated. Notices issued under sections 148 and 142(1) remained uncomplied with. Consequently, the Assessing Officer completed the assessment *ex-parte* u/s 144 r.w.s. 147 vide order dated 28.02.2024. In the assessment order, the Assessing Officer ultimately treated 50% of the sale consideration, amounting to Rs.42,81,300/-, as taxable capital gain and assessed the same to tax.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who dismissed the appeal *in limine* holding that since the assessee had not filed return of income and had not paid advance tax as required under section 249(4)(b) of the Act, the appeal was not maintainable.

5. Aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal before the Tribunal.

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6. We have heard the rival submissions and perused the material available on record. The Ld. CIT(A) dismissed the appeal *in limine* u/s 249(4)(b) of the Act, without adjudicating the issues on merits. We find that the Ld. CIT(A) has neither examined whether any advance tax was actually payable by the assessee nor exercised the discretion vested u/s 249(4)(b) of the Act. The assessee has contended that, as per the computation of income, he was eligible for refund and, therefore, no advance tax liability arose. These contentions have not been examined at all by the Ld. CIT(A). We also note that the assessee has filed before the Tribunal various evidences relating to (i) cost of acquisition of land, (ii) conversion charges from agricultural to non-agricultural land, (iii) development and improvement expenses, etc.... These evidences are relevant and material for adjudicating the case of the assessee. Admittedly, these evidences were not available before the Ld. CIT(A) when the impugned order was passed. Therefore, in the interest of justice, we deem it appropriate to set aside the impugned order and restore the matter to the file of the Ld. CIT(A). The Ld. CIT(A) is directed to consider the evidences submitted before the Tribunal, and thereafter adjudicate the appeal on merits in accordance with law after providing reasonable opportunity of being heard to the assessee.

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

The order is pronounced in the open Court on 30.01.2026

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Ahmedabad; Dated 30/01/2026

btk

Sd/-

**(DR. B.R.R. KUMAR)
VICE-PRESIDENT**

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आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,/DR,ITAT, Surat,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ **BY ORDER,**

सहायक पंजीकार (**Asstt. Registrar**)
आयकर अपीलीय अधिकरण
ITAT, Surat