



आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.3139/PUN/2025

निर्धारण वर्ष / Assessment Year: 2012-13

Narottam Atmaram Warde, Koprol, Saral, Alibag, Dist- Raigad – 402209.	V s	The Income Tax Officer, Pavel.
PAN: ABYPW5023A		
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Ronak Jain
Revenue by	Shri Ajitesh Kumar Meena – Addl.CIT
Date of hearing	29/01/2026
Date of pronouncement	09/02/2026

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee against the order of Id.Commissioner of Income Tax(Appeal)[NFAC], passed under section 250 of the Income Tax Act, 1961 for the A.Y.2012-13 dated 08.08.2024 emanating from the Assessment Order passed under section 144 R.W.S 147 of the I.T.Act, dated 13.12.2019. The Assessee has raised the following grounds of appeal :

“1. The learned Commissioner of Income Tax (Appeals) erred in interpreting law and facts in dismissing the appeal for non-prosecution



without adjudicating the grounds on merits, which is contrary to section 250(6) of the Income Tax Act.

2. The learned authorities erred in treating the land sold as a capital asset and, despite the land being rural agricultural land not falling within section 2(14) of the Act. Merely because grass ("Gavat") was grown does not alter the agricultural character of the land, and the addition of ₹19,02,350/- is liable to be deleted.

3. The assessee craves the right to add, amend, alter any grounds of appeal during the course of appeal."

Delay :

1.1 There is a delay of 413 days in filing appeal before this Tribunal. Assessee has filed condonation petition along with Affidavit and Medical Documents. Assessee submitted that he is a Senior Citizen and has been suffering from various medical ailments. Assessee also filed copies of the documents to prove his medical illness. Substantial justice is more important than procedural delays. In these facts, we are convinced that there is reasonable and sufficient cause for delay. Hence, Delay is condoned.

Submission of ld.AR :

2. Ld.AR for the Assessee filed a paper book. The relevant paragraphs of the ld.AR's submission are reproduced here as under :

"1.4 The learned CIT(A) relied upon decisions such as CIT v. Multiplan India Ltd. and other similar rulings. These authorities relate to ITAT's discretionary powers and do not apply to first appellate proceedings



governed by section 250. Courts have consistently held that the ratio of *Multipan India Ltd* cannot be applied by CIT(A).

The Hon'ble Supreme Court held in the matter of *ITO v. S. Chenniappa Mudaliar* 74 ITR 41 (SC) that appeals cannot be dismissed for default and must be decided on merits.

1.5 Since the impugned order does not frame points for determination, does not decide the grounds raised, and does not give reasons on merits, the same is void ab Initio, unsustainable in law, and liable to be set aside. On this ground alone, the impugned order passed by the learned CIT(A) deserves to be quashed, and the matter may either be decided by this Hon'ble Tribunal on merits or restored with a direction to decide afresh on merits.

.....

2.2 Revenue records conclusively establish agricultural character. The 7/12 extract, which is the most authoritative land record under Maharashtra Land Revenue Code, records the land as agricultural land.

Honourable Bombay High Court in *CIT v. Siddharth J. Desai* 139 ITR 628 (Bom HC) held that Revenue records are a vital and reliable indicator to determine the nature of land.

Honourable Bombay High Court in *CIT v. Debbie Alemao* 331 ITR 59 (Bom HC) held that "Actual earning of agricultural income is not a sine qua non for determining the character of agricultural land."

Absence of agricultural income is legally irrelevant. The AO has implicitly assumed that because no agricultural income was shown, the land is not agricultural. This assumption is unsustainable in law.

2.3 Even if the land was later used for development, the law is settled that what matters is the character of land on the date of transfer, not future use. Honourable Bombay High Court in *Gopal C. Sharma v. CIT* 209 ITR 946 held that Potential non-agricultural use or purchaser's intention does not change agricultural character.

2.4 Section 2(14)(iii) excludes "Agricultural land in India" (subject to distance conditions) There is no exclusion for grass land, no requirement of crop rotation, no requirement of food grains. Once land is agricultural and rural it is outside capital asset definition.

Burden of proof wrongly shifted by AO



Law is settled that:

Revenue must prove land is non-agricultural

Assessee is not required to prove agricultural income every year

In the present case

AO has not shown conversion order.

not shown NA assessment,

not rebutted revenue records.

Thus, addition fails on burden of proof itself.

2.5 Accordingly, the land sold by the appellant being rural agricultural land, the addition of 19,02,350/- on account of capital gains deserves to be deleted in full.”

Submission of Id.DR :

3. Ld.DR for the Revenue relied on the order of the Assessing Officer.

Findings & Analysis :

4. We have heard both the parties and perused the records. In this case, as per the assessment order, Assessee had not filed Return of Income for A.Y.2012-13 u/s.139(1) of the Act. Assessing Officer received information from ITO(I & C), Kalyan regarding sale of immovable property by Assessee during the year. It is mentioned in the Assessment Order that assessee along with 16 other co-owners have sold an immovable property for a consideration of Rs.3,23,40,000/-. During the assessment proceedings, assessee



submitted that it is an agricultural land and hence, no capital gain is taxable on sale of agricultural income. Assessing Officer invoked Section-2(47)(v) of the Income Tax Act, and held that it is taxable. Assessing Officer accordingly taxed Assessee's share out of the Capital Gain at Rs.19,02,350/-.

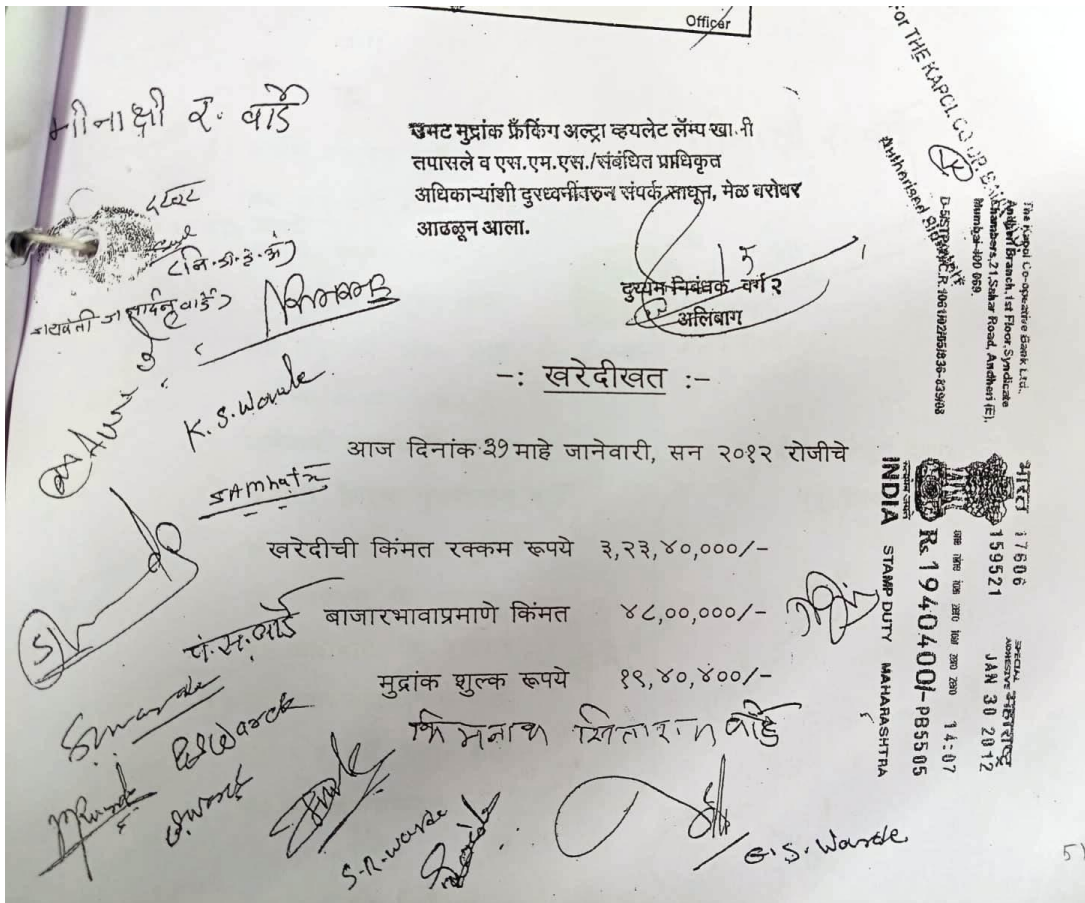
5. Ld.Assessing Officer(AO) has mentioned that Assessee has not filed details during assessment proceedings. Aggrieved by the assessment order, Assessee filed appeal before the Id.CIT(A).

6. Ld.CIT(A) dismissed the assessee's appeal on account of non-compliance. Aggrieved by the order of the Id.CIT(A), Assessee filed appeal before this Tribunal.

7. We have perused the assessment order. In the assessment order, in para 5, the Assessing Officer has stated that Assessee along with 16 co-owners had sold an immovable property for a consideration of Rs.3,23,40,000/-. However, in para 5.1, Assessing Officer states that there was a development agreement entered into by Assessee and hence, Assessing Officer has invoked Section 2(47)(v) of the Act.



8. We have perused the agreement referred by Assessing Officer. Ld.AR has filed copy of the said document dated 31.01.2012. It is noted that it is a sale deed dated 31.01.2012 having sale consideration of Rs.3,23,40,000/- duly registered. Relevant document is scanned and reproduced here as under :



8.1 Thus, Assessee along with 16 co-owners have entered into a Sale Deed with Mr.Nitin Chatwal on 31.01.2012 for the sale of their ancestral land. It is specifically mentioned in the sale deed that the land belongs to Warde Family since 1900. Assessing Officer has not brought on record the distance of the land from the Municipal Council/Corporation. It is an important fact to determine whether the land is agricultural or not!



9. Since Assessee had failed to file details before the Id.CIT(A), the Id.CIT(A) has dismissed the appeal of the assessee without adjudicating the grounds of appeal raised by Assessee. The Id.CIT(A) has not adjudicated grounds raised by the assessee on merits.

10. The Hon'ble Bombay High Court has held in the case of Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF) **(Bombay)/[2017] 297 CTR 614 (Bombay)** as under :

Quote, "8.From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act.

Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is



obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn.

Therefore, it would be noticed that the powers of the CIT(A) is coterminous with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.” Unquote.

10.1 Thus, the Hon’ble Bombay High Court has categorically held that Id.CIT(A) has to decide the appeal on merit and Id.CIT(A) does not have any power to dismiss appeal for non-prosecution.

11. In view of the above, in the interest of justice, we set-aside the order of the Id.CIT(A) to Id.CIT(A) for denovo adjudication. Ld.CIT(A) shall provide opportunity to the assessee. Assessee shall file all the necessary documents before the Id.CIT(A). Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.



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

Order pronounced in the open Court on 09 February, 2026.

Sd/-
VINAY BHAMORE
JUDICIAL MEMBER

Sd/-
Dr.DIPAK P. RIPOTE
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 09 Feb, 2025/ SGR

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

सहायक रजिस्ट्रार /Assistant Registrar
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.