IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No. 2192 & 2193/Bang/2025
Assessment Year: 2013-14 & 2014-15

Bileshivale Muddanna Govardhana Murthy, No.96, Bileshivale, Bidarahalli Hobli, Doddagubbi Post, Bengaluru. **PAN – AIPPG 7774 E**	Vs.	The Dy. Commissioner of Income Tax, Central Circle – 1(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri R.E Balasubramanyam, CA
Revenue by	:	Shri Azhar Zain VP, CIT(DR)

Date of hearing	:	05.02.2026
Date of Pronouncement	:	05.03.2026

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The set of 2 appeals filed at the instance of the assessee directed against the order under section 250 of the Income Tax Act, 1961, (hereafter the Act) dated 7th August 2025 for the assessment years 2013-14 to 2014-15.

First, we take up assessee's appeal in ITA No. 2192/Bang/2025 for A.Y. 2013-14.

2. The Ground No. 1 of the assessee's appeal is general in nature and does not require any separate and independent adjudication. Hence, the same is dismissed as infructuous.

3. The issue raised by the assessee through Ground No. 2 of the appeal is that the notice issued and assessment framed under section 153A of the Act based on search proceeding at the third party is invalid and void ab initio.

3.1 At the time of hearing, the learned counsel for the assessee before us submitted that he has been instructed by the assessee not to press the impugned legal ground of appeal. Accordingly, we dismiss the same as not pressed.

4. The interconnected issue raised by the assessee through Ground Nos. 3, 4 and 5 of the appeal is that the learned CIT(A) erred in confirming the addition on the transaction of agreement to sale of immovable property.

5. During the course of assessment proceedings, the AO examined various documents seized and furnished by the assessee. It was noticed that the assessee, along with his mother and brothers, was a joint owner of certain immovable properties situated at Bileshivale Village, Bidarahalli Hobli, Bangalore East Taluk. The properties were inherited by them and were held jointly in defined shares.

5.1 The AO observed that on 03.12.2012, the assessee and the other co-owners entered into Articles of Agreement with M/s Total

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Environment Constructions Pvt. Ltd. (TECS) in respect of 14.5 guntas of land in Survey No. 69/2. Under this agreement, TECS agreed to develop a larger tract of land (Schedule A property), and in consideration of transfer of Schedule B property, the owners were to receive developed residential area in Schedule C property along with monetary consideration. On the same day, the assessee and co-owners entered into an Agency Agreement with Manjiri Projects Pvt. Ltd. for sale of developed property and executed an Irrevocable General Power of Attorney (GPA) in favour of Nanjangud Projects Pvt. Ltd., a group concern of TECS.

5.2 The AO carefully analysed the contents of the Articles of Agreement, the Agency Agreement and the Irrevocable GPA. It was found that under the GPA, Nanjangud Projects Pvt. Ltd. was authorised to negotiate price, enter into agreements with third parties, execute sale deeds, hand over possession, receive consideration, admit execution before registering authorities and generally do all acts which the owners themselves could do. The power given was irrevocable in nature.

5.3 Further, the AO noted that substantial advance amounts were paid at the time of execution of agreement. The agreement also clearly recorded the extent of land, agreed consideration per acre and the development rights granted to TECS. The MOUs entered earlier in 2010 had already fixed the consideration per acre. Therefore, the AO was of the view that the transaction was not a mere proposal but a concluded arrangement transferring valuable rights in the property.

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5.4 Similarly, another transaction dated 18.09.2012 was noticed, wherein the assessee and co-owners agreed to transfer a larger extent of land measuring about 7 acres 31.5 guntas to TECS. In this case also, Articles of Agreement were executed, consideration was fixed, advances were paid and an Irrevocable GPA was granted in favour of the developer's nominee.

5.5 The AO observed that in both transactions, though formal sale deeds were not registered during the year, the developer was granted complete control over the property and was entitled to enter, develop, market and sell. The AO therefore issued a show cause notice asking why long-term capital gains should not be computed and brought to tax for AY 2013-14.

5.6 In response, the assessee submitted that no capital gains had accrued during the year. It was contended that what was executed was only an agreement to sell and not a registered conveyance deed. The assessee argued that possession of the property was not handed over to TECS in the legal sense. According to him, unless possession is transferred and title is conveyed by a registered document, there is no transfer under the Transfer of Property Act.

5.7 The assessee further submitted that the amounts received were only advances and that the total consideration was to be received over a period of several years depending upon development and sale of project. It was argued that the GPA was executed only for limited purposes such as obtaining approvals and facilitating development which do not amount to transfer of ownership rights.

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5.8 It was also contended that since the transaction was subject to various conditions and future events, capital gains could not be said to have accrued in the year under consideration. Therefore, the assessee claimed that there was no liability to offer capital gains in AY 2013-14.

5.9 However, after examining the reply and documents, the AO rejected the explanation of the assessee. The AO held that the issue is not whether a registered sale deed was executed, but whether there was a "transfer" within the meaning of section 2(47) of the Act. The AO opined that under section 2(47)(v) of the Act, transfer includes any transaction which allows possession of immovable property to be taken or retained in part performance of a contract as referred to in section 53A of the Transfer of Property Act.

5.10 The AO observed that the agreements clearly granted TECS and its group the right to enter upon the land, develop it, deal with third parties, receive sale proceeds and execute documents. Such extensive rights, coupled with payment of substantial consideration and irrevocable GPA, effectively transferred the enjoyment and control of property. Even if formal possession was not physically handed over, the possession in legal sense stood transferred.

5.11 The AO relied on the judgment of the Hon'ble Supreme Court in the case of Chaturbhuj Dwarkadas Kapadia v. CIT (260 ITR 491), wherein it was held that for purposes of capital gains, transfer can take place even before execution of a registered sale deed if the developer is put in a position to exercise rights of ownership.

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5.12 The AO further observed that the assessee's contention that payments were mere advances was not acceptable, because the consideration per acre was already fixed and rights were already parted with. The transaction was capable of specific performance. Therefore, capital gains accrued on the date of agreement and execution of GPA, namely 03.12.2012 and 18.09.2012 respectively.

6. For computation, since the fair market value as on 01.04.1981 was not readily available, the AO adopted sale instance data obtained from the Sub-Registrar and worked out the value by reverse indexation method. Indexed cost of acquisition was calculated accordingly. Long-term capital gains were computed separately for both properties. As the land was jointly owned by five persons, the assessee's share was taken at 1/5th of total capital gains in each case which arrived at Rs. 79,61,430/- and Rs. 17,51,16,294/- only.

6.1 Since the assessee had not declared these capital gains in the return of income, the AO added the assessee's share of long-term capital gains to the total income for AY 2013-14.

7. The aggrieved assessee preferred an appeal before the learned. The learned CIT(A) disposed off the assessee's appeal as on 8th August 2022 in an ex-parte order. On subsequent appeal by the assessee before the Tribunal in ITA No. 76 to 82/Bang/2023, the Tribunal vide order dated 18th May 2023 set aside the issue to file of the learned CIT(A) for fresh adjudication.

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8. In the set aside proceedings, the assessee, before the learned CIT(A) submitted that the land in question was ancestral property which had come down through three generations. The assessment order itself records that the property was inherited by the assessee's father from his father and so on. Therefore, the property constituted joint family property of a Hindu Undivided Family (HUF). This fact was also recognised by the II Additional Senior Civil Judge, Bangalore (Rural) in the partition decree, wherein it was specifically observed that the assessee and his family constituted a HUF. In view of this, it was submitted that the property did not belong to the assessee in his individual capacity and any capital gains, if arising, could not be assessed in his individual hands.

8.1 The assessee further explained that section 4 of the Income-tax Act charges income-tax on the total income of a "person". The term "person" as defined under section 2(31) includes an individual as well as a HUF. Therefore, before assessing any income, it must be established who is the correct taxable entity. Reliance was placed on the decision of the Hon'ble Supreme Court in ITO v. Ch. Atchaiah reported in 84 taxman 630, wherein it was clearly held that the AO must tax the right person and the right person alone. Even if income has escaped assessment in the hands of the correct person, it cannot justify taxing it in the hands of a wrong person. Therefore, the addition made in the hands of the assessee individually is legally unsustainable.

8.2 On the question of transfer, the assessee submitted that there was no transfer during the relevant previous year within the meaning of section 2(47) of the Act. The agreements entered into were only

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development agreements for the purpose of development and construction of residential property. The developer was granted limited rights to enter upon the land for obtaining conversion of agricultural land into non-agricultural land and to carry out development activities. The Articles of Agreement clearly provided that the permission given to the developer to perform its obligations shall not be construed as handing over of possession under section 53A of the Transfer of Property Act, 1882 and shall not amount to transfer as defined under the Income-tax Act. Therefore, it was submitted that mere execution of a development agreement does not result in transfer of ownership or accrual of capital gains.

8.3 It was further argued that the land continued to be agricultural land as on the date of the development agreement and had not been converted into non-agricultural land. Since the land was agricultural in nature, it did not fall within the definition of "capital asset" under section 2(14) of the Act. The definition of capital asset specifically excludes agricultural land in India which is not situated within specified municipal limits. The subject land was agricultural land and therefore outside the scope of capital asset. In the absence of a capital asset, there can be no capital gain chargeable to tax.

8.4 Without prejudice to the above contentions, the assessee submitted that even assuming that a transfer had taken place, he was not a beneficiary of the transaction. Though he was one of the signatories to the Joint Development Agreement dated 18.09.2012 and to the other agreement relating to 14.5 guntas of land in Survey No. 69/2, he had signed only as a consenting member of the family. He did

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not receive any consideration in his individual capacity. Subsequent to the execution of the development agreement, a civil suit for partition was filed before the II Additional Senior Civil Judge, Bangalore (Rural). As per the final decree dated 13.07.2019, the properties which were subject matter of the Joint Development Agreement were allotted to other family members and not to the assessee, except for a very small portion. Therefore, the assessee was not the owner or ultimate beneficiary of the transferred property and did not receive the benefits arising from the development agreement.

8.5 The assessee contended that once it is established that he was not the real owner of the property and did not receive the consideration, no capital gains can be taxed in his hands. Tax liability under the Act arises only in the hands of the person who earns or receives the income in the capacity of an owner. In the present case, the assessee neither held the property in his individual capacity nor received the consideration arising from the development agreement.

8.6 In view of the above submissions, it was prayed before the learned CIT(A) that the addition made by the Assessing Officer towards long-term capital gains be deleted in entirety, as the same is legally and factually unsustainable.

8.7 However, the learned CIT(A) dismissed the assessee's submission and confirmed the addition made by the AO by observing as under:

> ***5.4*** *As regards the LTCG, the appellant submitted that he is not a beneficiary to the transaction but signed the agreement as consenting member which is evident from the Agreement. Hence is not a owner of the property. He also submitted that on perusal of the decree granted by the Addl. Civil Judge,*

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Bangalore, the properties were partitioned and the appellant was not a beneficiary to the partition.

5.5 *I have perused the Articles of agreement which refers to the appellant as one of the owners of the property. He was represented by his brother, B.M Sundaresha as his Power of attorney holders. The appellant was the son of the second wife of Late Sri. B.C.Muddanna. There was a dispute among the children of the first and second wife and the parties filed an OS before the Civil Judge for partition. The decree was compromised and as result of the compromise, certain property was allotted to the second wife and her children which included the appellant. However, it is noticed that the agreement with TECS was dated earlier to the decree of partition. On perusal of the details of agreement and it's annexures, it is seen that the appellant's mother, appellant and his brothers became the absolute owners of the property as mentioned in Item No.1 to 12 in Schedule 'B' of the Property. So, the contention of the appellant that he is not a beneficiary is bereft of any logic. Hence, is liable to be dismissed.*

5.6 *There is no proof that the appellant signed the Agreements as a consenting party and is not a beneficiary to the transactions.*

5.7 *The contention of the Appellant that the possession of land was not transferred to TECS but only rights to develop the land and possession to a limited extent of conversion of the land from agricultural to non-agricultural was given to the developer. It was contended that the permission given to M/s TECS to perform its obligations should not be construed as handing over the possession of the property as envisaged in Section 53A of the Transfer of Property Act.*

5.8 *It is seen that M/s TECS had paid an advance of Rs 1,85,7,000/- to the owners including the appellant's mother who received Rs 8,33,750/- and balance was to be paid in installments as mentioned in the agreement.*

5.9 *On the same day as the Agreement, i.e. 3/12/2012, the appellant and the other co-owners of Schedule B property entered into an agency agreement with Nanjungud Projects Pvt Ltd appointing them as Agents to arrange for sale of Schedule C property. This entity was to co-ordinate with M/s TECS to ensure that every month, out of the total sales in the project, a minimum 20% sales are of Schedule B property. The Owners also executed an Irrevocable power of attorney in favour of Nanjungud Projects Ltd on 3/12/2012. Incidentally this company is also a group concern of M/s TECS. This company was given the power/authority to authorise, execute and perform any act which the owners could do on their own.*

5.10 *I have perused the agreement: Agency Agreement and the GPA was perused. The appellant's contentions that there was no transfer of possession has to read not as per the words of the Agreement, but the intention of the parties to the Agreement. On perusal of the Articles of Agreement, Agency Agreement and the Irrevocable GPA issued, it is clear that the appellant has parted with the asset and thus a transfer as per rights of possession. The negotiations regarding the price and other terms of sale, The GPA also talks about Nanjungud Properties handing over possession, enter into and execute valid and binding agreements to sell or transfer in any manner, sale deeds, rectification deeds, exchange deeds with any third party in respect of the Schedule B Property. Hence the grounds of the appellant that there was no transfer of the property, either from the perspective of section 2(47) of the IT*

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Act or section 53A of the Transfer of Property Act is not correct. Hence, I do not find any reason to interfere with the findings and the conclusions of the AO. Ground Nos 3.1, 3.2, 3.3 are dismissed.

9. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

10. The learned Authorised Representative (AR) before us filed a paper book running from pages 1 to 136 and reiterated the submissions made before the lower authorities. He strongly contended that the learned CIT(A) failed to appreciate the legal and factual position in correct perspective, particularly the effect of the partition decree and the subsequent Joint Development Agreement (JDA) executed in 2023.

11. On the other hand, the learned Departmental Representative (DR) relied upon the orders of the Assessing Officer (AO) and the learned CIT(A). It was submitted that the execution of the Joint Development Agreement dated 18.09.2012, along with the Agency Agreement and Irrevocable GPA, clearly established transfer within the meaning of section 2(47)(v) of the Act. According to the learned DR, once substantial rights were parted with and consideration was fixed, capital gains were rightly brought to tax.

12. We have heard the rival contentions of both the parties and perused the materials placed on record. The core issue before us is whether any transfer within the meaning of section 2(47) of the Act had taken place in the year under consideration so as to give rise to taxable long-term capital gains in the hands of the assessee in his individual capacity.

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12.1 It is an admitted position that the assessee was one of the parties to the Joint Development Agreement dated 18 September 2012 and was represented through his Power of Attorney holder. However, being a signatory to a development agreement does not automatically result in a transfer of property for the purposes of capital gains. The true test is whether, in substance, the rights in the property were effectively and irrevocably parted with and whether the transaction had attained finality so as to result in accrual of income.

12.2 From the material placed before us, it is evident that subsequent to the execution of the JDA dated 18 September 2012, serious disputes arose within the family. A partition suit was filed and ultimately a decree of partition was passed by the competent Civil Court in the year 2018 which is available on pages 43 to 64 of the paper book. As per the decree, substantial portions of the property which were subject matter of the earlier development agreement were allotted to other family members. This development is crucial to decide the issue on. Once the Civil Court determined and re-allotted the respective shares of the family members, the very foundation on which the earlier JDA rested became unsettled. The fact that a fresh Joint Development Agreement was entered into only on 4 August 2023 between the developer and the assessee's brother in which assessee is not the party further strengthens the inference that the original JDA dated 18 September 2012 did not complete in the manner contemplated. The copy of the fresh JDA is available at pages 65 to 96 of the paper book.

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12.3 In our considered view, the learned CIT(A) has proceeded mainly on the basis that extensive powers were granted under the agreement and the GPA, and therefore there was a transfer under section 2(47)(v) of the Act. However, he has not examined the subsequent and material developments, namely the partition litigation, the decree of the Civil Court and the fact that the original arrangement was effectively superseded by a later agreement. When the very subject matter of the development agreement became the subject of dispute and was re-allocated by judicial decree, it cannot be said that the developer had obtained irrevocable and enforceable rights in terms of section 53A of the Transfer of Property Act during the year under consideration.

12.4 Section 2(47)(v) of the Act read with section 53A of Transfer of Property Act contemplates a situation where the transferee is put in possession in part performance of a contract which is capable of specific performance and where the transferor is debarred from asserting any rights inconsistent with the contract. In the present case, the subsequent filing of a partition suit and passing of decree clearly demonstrate that the arrangement had not reached such finality. The rights were in dispute and the ownership itself was under adjudication. Therefore, the essential ingredients of section 53A of Transfer of Property Act were not satisfied in a conclusive manner so as to attract the provisions of section 2(47)(v) of the Act in the year in question.

12.5 Further, the fact that a fresh development agreement had to be executed in 2023 indicates that the earlier JDA did not materialise. If the earlier agreement had resulted in a complete and effective transfer of rights, there would have been no occasion for entering into a fresh

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agreement after the partition decree. This subsequent conduct of the parties is a strong surrounding circumstance showing that the original JDA remained contingent and inoperative in practical terms.

12.6 In light of these facts, we are of the considered opinion that the Revenue was not justified in proceeding on the assumption that a completed transfer had taken place merely on the basis of the execution of the JDA dated 18 September 2012 and the GPA. The learned CIT(A) has not properly appreciated the impact of the partition decree and the subsequent agreement, which go to the root of the matter. The so-called transfer relied upon by the Revenue did not attain finality and did not result in accrual of real income in the hands of the assessee during the relevant previous year.

12.7 Accordingly, we hold that the computation of long-term capital gains in the hands of the assessee for the year under consideration is not sustainable in law or on facts. The addition made by the Assessing Officer and confirmed by the learned CIT(A) is directed to be deleted. The grounds raised by the assessee on this issue are allowed.

13. The next issue raised by the assessee through Ground No. 6 of the appeal is that the learned CIT(A) erred in confirming the disallowances of agricultural income of Rs. 7,75,000/-.

14. During the assessment, on verification of the computation of income, the AO noticed that the assessee had declared agricultural income of Rs. 7,75,000/-. The assessee was asked to substantiate the said claim. The AO specifically called upon the assessee to furnish details

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of expenditure incurred on seeds, fertilizers and pesticides, details of infrastructure available for carrying out agricultural activities, irrigation facilities, copies of land holding records, details of crops grown, evidence of expenditure incurred for cultivation, and proof of sale of agricultural produce.

14.1 However, despite being given opportunity, the assessee failed to furnish any satisfactory evidence in support of the claim. The AO observed that the assessee did not produce a copy of RTC to establish ownership of agricultural land. No bills, vouchers or sale receipts were produced to evidence sale of agricultural produce. In effect, according to the AO, the assessee did not produce even a single piece of documentary evidence to support the claim that the income declared was derived from agricultural operations.

14.2 The AO further observed that once agricultural income is declared in the return, the burden lies on the assessee to prove that such income actually arose from agricultural activities. Since agricultural income forms part of the computation for rate purposes and impacts the overall tax liability, it was necessary to examine the genuineness of the claim. The AO held that the assessee failed to discharge the onus of proving that the income was agricultural in nature.

14.3 In support of this conclusion, reliance was placed on the decision of the Hon'ble Madras High Court in the case of B. Ramachandran v. CIT (2014) 43 taxmann.com 430 (Mad), wherein it was held that if the assessee fails to properly explain the receipt claimed as agricultural income, the exemption is liable to be denied.

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14.4 Accordingly, the AO disallowed the claim of agricultural income and treated the amount of Rs. 7,75,000/- as income from other sources. The same was added to the total income of the assessee.

15 The aggrieved assessee preferred appeal before the learned CIT(A).

16. Before the learned CIT(A), the assessee submitted that agricultural income of Rs. 7,75,000/- was shown in his return of income. It was contended that the assessee was in possession of documentary evidence in support of agricultural income in the form of RTC records. However, since the year under consideration was very old years and the assessee had been subjected to two search actions, and was also in judicial custody for some time, he was unable to immediately produce the RTCs for the relevant year. Further, the records maintained at the Panchayat office were in physical form and not digitally available, causing genuine difficulty in retrieving old records.

16.1 The assessee submitted that he was in possession of RTCs for subsequent years from 2014-15 onwards, which clearly showed that the agricultural land stood in the name of his deceased father and was being utilized for agricultural activities. The agricultural properties were originally acquired in the name of his father, who expired on 12.03.1996, and thereafter devolved upon the legal heirs. Therefore, it was evident that the assessee was holding agricultural land and had derived income from agricultural operations during the year under assessment.

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16.2 It was further argued that the agricultural income declared by the assessee had been accepted by the department in earlier assessment years 2008-09 and 2009-10. In the absence of any incriminating material found during the search to suggest otherwise, the AO ought to have maintained consistency and accepted the agricultural income declared for the year under consideration as well.

16.3 In support of the principle of consistency, reliance was placed on the decision of the Hon'ble Supreme Court in Radhasoami Satsang v. Commissioner of Income-tax (1992) 60 Taxman 248 (SC), wherein it was held that though res judicata does not strictly apply to income-tax proceedings, where a fundamental aspect permeating through different assessment years has been accepted by the parties and has attained finality, it should not ordinarily be disturbed in a subsequent year without any material change in facts.

16.4 On these grounds, the assessee prayed that the addition of agricultural income treated as income from other sources be deleted and relief be granted by cancelling the addition made by the Assessing Officer.

17. However, the learned CIT(A) confirmed the addition made by the AO by observing as under:

> ***5.2*** *As regards the addition made on account of agricultural income, the appellant stated that he is in possession of documentary evidence in support of agricultural income in the Form of RTC. However, as the matter was old and the appellant was in abroad, he was unable to produce the RTC. He was in possession of RTC for the years subsequent to 2014-15.*
> ***5.3*** *However, in view of the fact that the appellant did not produce any RTC or any other acceptable documentary evidence in support of the agricultural income, his contention cannot be accepted. The addition made is hereby confirmed. The grounds 2.1 to 2.3 raised are dismissed.*

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18. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

19. The learned Authorised Representative (AR) reiterated the submissions made before the lower authorities. He submitted that the assessee was holding agricultural lands inherited from his deceased father and that agricultural operations were carried on therein. He contended that the non-production of RTC extracts for the specific year was due to genuine practical difficulties, including the lapse of considerable time and search proceedings faced by the assessee. It was further submitted that RTCs for subsequent years clearly established the existence of agricultural lands and their continued agricultural use. Therefore, the addition made purely for want of certain documents was unjustified.

20. On the other hand, the learned Departmental Representative (DR) relied upon the findings of the Assessing Officer (AO) and the learned CIT(A). It was submitted that the burden to prove that income claimed as agricultural income is actually derived from agricultural operations lies squarely upon the assessee. Since no documentary evidence such as RTC copies, sale bills, vouchers, or proof of expenditure was produced for the relevant year, the AO was justified in treating the same as income from other sources.

21. We have heard the rival submissions of both the parties and carefully perused the materials available on record. The only issue for our consideration under this ground is whether the agricultural income of

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Rs. 7,75,000/- declared by the assessee is liable to be treated as income from other sources.

21.1 It is not in dispute that the assessee had declared agricultural income in his return of income. The Assessing Officer rejected the claim mainly on the ground that the assessee did not produce RTC copies and other supporting evidence such as bills, vouchers and sale receipts during the course of assessment proceedings. The learned CIT(A) confirmed the addition solely for the reason that no documentary evidence was produced for the relevant year.

21.2 In our considered view, the approach adopted by the lower authorities is too technical and does not take into account the surrounding facts and circumstances of the case. The assessee has consistently stated that the agricultural lands were inherited from his deceased father and that agricultural activities were carried on in those lands. The assessee has also explained that the year under consideration was very old and that due to search proceedings, judicial custody and practical difficulties in obtaining physical records from the Panchayat office, he was unable to immediately produce the RTCs pertaining to that specific year. At the same time, the assessee has produced RTCs for subsequent years which shows the existence of agricultural land and its continued use for agricultural purposes. These facts have not been disputed by the Revenue.

21.3 It is also relevant that the agricultural income declared by the assessee in earlier assessment years had been accepted by the department. There is nothing on record to show that during the course

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of search any incriminating material was found to establish that the agricultural income declared was bogus or non-genuine. When the ownership of agricultural land is not disputed and when there is no material brought on record to show that no agricultural operations were carried out, merely non-production of certain documents for an old year cannot, by itself, justify the rejection of the claim of the assessee.

21.4 The burden on the assessee is to show that he possessed agricultural land and that income was derived from agricultural operations. In the present case, the existence of agricultural land inherited from the father stands substantiated and has not been controverted by the Revenue. In such circumstances, the claim cannot be rejected in a summary manner without bringing any positive evidence to disprove it.

21.5 Further, the principle of consistency as laid down by the Hon'ble Supreme Court in Radhasoami Satsang (supra) applies to the facts of the present case. Though each assessment year is independent, when a fundamental aspect such as ownership of agricultural land and earning of agricultural income has been accepted in earlier years and there is no material change in facts, the Revenue should not take a contrary stand in a subsequent year without cogent reasons. Considering the totality of the facts, we are of the view that the addition of Rs. 7,75,000/- made by treating the agricultural income as income from other sources is not sustainable. The AO has not brought any material on record to demonstrate that the income was not agricultural in nature. The addition is therefore directed to be deleted. Accordingly, Ground No. 6 raised by the assessee is allowed.

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22. In the result, the appeal of the assessee is hereby partly allowed.

Coming to ITA No. 2193/Bang/2025 of the assessee for A.Y. 2014-15

23. The assessee in the memo of appeal has raised 3 Grounds which are interconnected and effectively the issue raised is that the learned CIT(A) erred in confirming the addition made merely based on statement of third person.

24. The relevant facts are that during the course of search, the statement of Shri B.M. Sundaresh, Director of the company namely M/s L.G. Builders & Developers P Ltd in which the assessee was also a director, was recorded under section 132(4) of the Act. In his statement, he voluntarily admitted a sum of Rs. 5 crores as income undisclosed to tax in the hands of the company and its two directors (Shri BM Sundaresh & the assessee). Subsequently, in a letter addressed to the DDIT (Inv.), the assessee Shri B.M. Sundaresh furnished a provisional bifurcation of the undisclosed income and agreed to offer specific amounts in the hands of the respective persons. In the case of Shri B.M. Govardhan Murthy (the appellant assessee), a sum of Rs. 25 lakhs was stated as provisional undisclosed income, and later in the return filed in response to notice under section 153A, he declared income of Rs. 30,14,750/- only.

24.1 However, the AO observed that the declaration made under section 132(4) of the Act was in respect of income undisclosed to tax

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and could not be neutralised by taking shelter under income already returned. Since no proper break-up or working of the total declaration of Rs. 5 crore was furnished, the AO apportioned the undisclosed income among the three persons on the basis that the company was the main entity and was responsible for the primary source of income. Accordingly, out of the total disclosure of Rs. 5 crores, a sum of Rs.3.5 crore was attributed to the company, Rs. 1 crore attributed the company to the assessee Shri B.M. Govardhan Murthy and remaining Rs. 50 Lakh to Shri Shri BM Sundaresh.

24.2 The AO further noted that the assessee has offered Rs. 30,14,750/- against the provisional income of Rs. 25 Lakh, hence the excess amount of Rs. 5,14,750 reduced from the said amount of Rs. 1 crore. Therefore, the difference of Rs. 5,14,750 was reduced from Rs. 1 crore and the balance amount of Rs. 94,85,250 was treated as undisclosed income for the assessment year 2014-15. The said amount of Rs. 94,85,250 was accordingly added to the total income of the assessee as income brought to tax on account of the declaration made during the search proceedings.

25. The aggrieved assessee preferred appeal before the learned CIT(A).

26. Before the learned CIT(A), the assessee submitted that the addition of Rs. 94,85,250 was made solely on the basis of the statement recorded under section 132(4) of the Act from Mr. B.M. Sundaresh during the course of search. It was contended that no independent or incriminating material was found during the search to show that the

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assessee had earned any undisclosed income over and above what was declared in the return. The AO had not brought on record any document, seized material, cash, or other evidence to support the addition. Therefore, the addition was made merely on the basis of a statement, without any corroboration.

26.1 Reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT v. S. Khader Khan & Sons reported in 25 taxmann.com 413, wherein it was held that a statement, though an important piece of evidence, is not conclusive and cannot by itself form the sole basis of addition unless supported by material evidence. It was further submitted that the CBDT, through its instructions F. No. 286/98/2013-IT (Inv.II) dated 18th of December 2014, has clearly directed officers not to obtain confessions during search and not to make additions merely on the basis of statements without credible evidence. In the present case, the AO failed to follow these guidelines.

26.2 The assessee also submitted that the burden of proof lies on the Department to show that any undisclosed income was actually earned and received by the assessee. The addition cannot be made on assumptions or on the basis of an admission by another person, without proving that such income actually accrued to the assessee. It was argued that taxing an amount in the hands of the assessee merely because of a general disclosure made during search is not legally sustainable.

26.3 Further, it was contended that even if any undisclosed income was to be assessed, it should be assessed in the hands of the correct

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person. Reliance was placed on judicial precedents to submit that income must be taxed in the hands of the right person and not on an arbitrary basis. In the present case, the business activities were carried out by the company, and there was no material to show that the alleged undisclosed income belonged to the assessee in his individual capacity.

26.4 In view of the above submissions and the settled legal position, the assessee prayed that the addition of Rs. 94,85,250 made by the AO be deleted, as it was not supported by any incriminating evidence and was based only on a statement recorded during search.

26.5 However, the learned CIT(A) dismissed the argument advanced by the AR of the assessee and confirmed the addition made by the AO by observing as under:

> *6.0. A.Y. 2014-15: The assessment was completed U/s 143(3) of the Act as it was the search year. During the search, in the statement recorded U/s 132(4), Sri. B.M. Sundaresh who was a director in M/s L.G. Electronics admitted Rs 5 crores as undisclosed income along with Appellant in the hands of the company and its two directors. In the case of the appellant, the undisclosed admitted was Rs 1 crore for the A.Y.2014-15. However, in the return of income filed u/s 153A, the appellant declared a total income of Rs 30,14,750/-. The appellant submitted that as the returned income in case of the company, M/s L.G Builders and one of its directors, Sri. B.M. Sundaresh was more than 5 crores for the A.Ys 2008-09 to 2014-15, no fresh addition could be made.*
> *6.1 The AO held that the appellant cannot take the benefit of the returns already filed and added a sum of Rs 94,85,250/- on the basis that since the appellant has not provided any breakup of the declaration to be apportioned among the three entities (the Company and its two directors), the apportionment of income was being done on the basis of taking the Company as the main entity and major source of income generation. Accordingly the amount of Rs 5 crores was apportioned between the Company, Rs 3.50 crores, Sri. B.M. Govardhan Murthy, Rs 1 crore and Sri. B.M. Sundaresh, Rs 0.50 crores.*
> *6.2 During the appellate proceedings except for submitting that the addition was based on statements recorded during the Search, the appellant did not provide any breakup of the undisclosed income surrendered/admitted during search. The appellant was granted as many as eight opportunities to explain its case and despite this its ground but no one appeared.*

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6.3 In view of the same, it is assumed that the appellant is not interested in pursuing its grounds of appeal. As no submissions on merits of the additions are forthcoming, the addition made by the AO for the A.Y. 2014-15 is confirmed. Ground Nos 2,3,4,5 are dismissed.

27. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

28. The learned Authorised Representative (AR) reiterated that the addition of ₹94,85,250/- was made solely on the basis of a statement recorded under section 132(4) of the Act from Shri B.M. Sundaresh during the course of search. He submitted that no incriminating material was found during search to establish that the assessee had earned undisclosed income of ₹1 crore or any part thereof. It was further argued that the apportionment made by the Assessing Officer (AO) was purely ad hoc and without any evidentiary basis.

29. On the other hand, the learned Departmental Representative (DR) relied upon the orders of the AO and the learned CIT(A). It was submitted that the statement recorded under section 132(4) carries evidentiary value and that the assessee failed to provide any explanation or break-up of the disclosure made during search. Therefore, according to the Revenue, the AO was justified in apportioning the disclosed amount and bringing the same to tax.

30. We have heard the rival submissions and carefully perused the materials available on record. The undisputed fact is that the addition of Rs. 94,85,250/- has been made in the hands of the assessee solely on the basis of a statement recorded under section 132(4) from Shri B.M. Sundaresh during the course of search. Except for such statement and

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the subsequent apportionment made by the AO, there is no reference to any seized document, cash, books of account, diary, loose sheet or other incriminating material to show that the assessee had actually earned undisclosed income of Rs. 1 crore or any portion thereof.

30.1 From the assessment order, it is evident that the AO has proceeded on the premise that since a disclosure of Rs. 5 crore was made in the statement, the same has to be apportioned among the company and its two directors. The basis of apportionment adopted by the AO is not founded on any seized evidence but only on an assumption that the company was the main entity and, therefore major amount was apportioned to the company and, the balance could be distributed among the directors in a particular ratio. Such an exercise, in our considered view, is purely ad hoc and not supported by any tangible material found during the course of search.

30.2 It is a settled principle of law by the several judicial pronouncements that though a statement recorded under section 132(4) of the Act is an important piece of evidence, but the same cannot, by itself, be treated as conclusive proof of undisclosed income unless it is supported by corroborative material. The Hon'ble Supreme Court in the case of CIT v. S. Khader Khan & Sons(supra) has clearly held that an admission is not conclusive and it is open to the assessee to demonstrate that the same is incorrect. Further, the CBDT itself has issued instructions cautioning the Department not to make additions merely on the basis of confessional statements without bringing on record credible evidence. These legal principles make it clear that the

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burden lies on the Revenue to establish, with reference to material found during search, that the assessee has in fact earned undisclosed income. In the present case, we find that no such incriminating material has been brought on record. The AO has not pointed out any seized document evidencing receipt of unaccounted money by the assessee. There is no finding that any asset, investment, expenditure or transaction relatable to the assessee was detected during search which could justify the addition. The entire addition rests only on the statement of another person and a subsequent artificial apportionment. Even the alleged sum of Rs. 1 crore attributed to the assessee is not shown to have any direct nexus with any seized material.

30.3 We also note that income must be assessed in the hands of the right person and on the basis of evidence. A disclosure made in general terms, without specific reference to the manner in which income was earned and without linking it to supporting documents, cannot automatically result in addition in the hands of an individual. In the absence of corroborative incriminating material, such addition cannot be sustained merely because the assessee did not furnish a break-up during assessment proceedings.

30.4 In view of the above discussion, we are of the considered opinion that the addition of Rs. 94,85,250/- made in the hands of the assessee is not sustainable in law, as it is based solely on a statement recorded during search without any independent or corroborative incriminating material. Accordingly, we set aside the order of the learned CIT(A) on this issue and direct the AO to delete the addition made by him. Hence, the grounds raised by the assessee are allowed.

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31. In the result, the appeal of the assessee is allowed.

32. In the combined result, ITA No. 2192/Bang/2025 is partly allowed whereas ITA No. 2193/Bang/2025 is allowed.

Order pronounced in court on 5th day of March, 2026

Sd/- Sd/-

(KESHAV DUBEY) **(WASEEM AHMED)**
Judicial Member Accountant Member

Bangalore
Dated, 5th March, 2026
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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