

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

श्री संजय गर्ग, न्यायिक सदस्य एवं
श्री नरेन्द्र प्रसाद सिन्हा, लेखा सदस्य के समक्ष।

Before Shri Sanjay Garg, Judicial Member And
Shri Narendra Prasad Sinha, Accountant Member

1. आयकर अपील सं/ITA No.1667/Ahd/2025 - by Revenue
2. आयकर अपील सं/ITA No.1602/Ahd/2025 - by Assessee
(निर्धारण वर्ष / Assessment Year : 2016-17)

1. The ACIT (Internation Taxation) Vadodara - 390 007	बनम / v/s.	1. Ahmed Mahomed Pandor Moti Masjid Falia Jitali Ankleshwar Bharuch - 393 001
2. Ahmed Mahomed Pandor Ankleshwar Bharuch - 393 001		2. The ACIT Circle Int. Txn, Vadodara - 390 007
स्थाप्री लेख सं./PAN: CWUPP 2469 N		

(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
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Assessee by :	Shri Rasesh Shah, AR
Revenue by :	Shri Sher Singh, CIT-DR

सुनवाई की तारीख/Date of Hearing : 10/12/2025
घोषणा की तारीख /Date of Pronouncement: 09/03/2026

आदेश/ORDER

Per Sanjay Garg, Judicial Member:

The present are cross-appeals one by the Revenue and the other by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'CIT(A)'] dated 06/06/2025 passed u/s.250 of the Income Tax

Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Year (AY) 2016-17.

2. The brief facts of the case are that the assessee is an individual. He did not file his return of income for the year under consideration. As per information received by the Assessing Officer (AO), the assessee had sold two immovable properties during the year under consideration. Accordingly, case was re-opened by the AO u/s 147 of the Act and notice u/s 148 of the Act was issued. In response, the assessee filed return of income, wherein he had shown total income of Rs. 6,88,630/- as income from other sources. Assessee did not show any capital gains income earned on the sale of the aforesaid immovable property. The assessee claimed before the AO that the land sold by the assessee was agricultural land not falling in the definition of capital asset as defined u/s 2(14) of the Act. However, the AO did not agree with the above submissions of the assessee and made the impugned addition of Rs.8,75,97,656/- into the income of the assessee apart from assessing the income from other sources as declared by the assessee in the return filed in response to notice u/s 148 of the Act. In appeal, the Ld. CIT(A) deleted the addition made by the AO on account of long term capital gains (LTCG) earned by the assessee on sale of land.

3. Being aggrieved by the said order of the Ld. CIT(A), the Revenue has come in appeal agitating the action of the Ld. CIT(A) in deleting the impugned addition made by the AO, whereas, the assessee has filed the appeal raising legal grounds relating to the validity of the notice issued u/s.148 of the Act, the jurisdiction of the AO to pass the assessment order in question stating that the jurisdiction lied with the AO International Taxation

as the assessee was a NRI and further that the assessment order was passed after the limitation period, etc.

4. We have heard the rival contentions and gone through the record. First, we take up the Revenue's appeal in ITA No.1667/Ahd/2025. The Revenue, in this appeal, has taken the following grounds of appeal:

"On the facts and circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs. 8,75,97,656/- without appreciating the fact that in the sale deed at page no. 127 (Block No. 254) and at page no. 58 (block no.263), it is written that the said agricultural land was purchased for bonafide industrial purposes and the purchaser has deducted the tax at source considering the land in question as a capital asset."

5. We note that the AO had made the impugned addition observing that the land in question was a capital asset assessable to LTCG as the same was situated within the prescribed limits from the Municipal limits. Further that, the land was sold by the assessee to a company M/s.Bharuch Enviro Infrastructure Ltd. for use of the same for industrial purposes. The Ld. CIT(A), after considering the relevant evidences on the file, has held that the land in question was situated as per land revenue record was an agricultural land. Further, the location of the land was between 2-3 Kilometers from the nearest Municipality, i.e. Ankleshwar INA which has a population of 24789 as per the last census of 2011 and, therefore, it was out of the definition of capital asset as per the provisions of section 2(14)(iii)(b)(1) of the Act. Her further observed that the said land was agricultural land at the time of its sale was in financial year 2015-16. That the Collector had issued a certificate for

its use for industrial purposes in financial year 2020-21 on the basis of a specific application moved by the purchaser, M/s. M/s.Bharuch Enviro Infrastructure Ltd. He observed that if the land was converted for industrial use by the purchaser after 5-6 years of the sale-deed, it cannot be said to be a capital asset or non-agricultural land at the time of its sale by the assessee. He, in this respect, relied upon on the decision of the ITAT in the case of Hiten Tulsibhai Engineer vs. ITO in ITA No.77/Ahd/2023 dated 13/09/2023.

6. Now, the Revenue has not raised any ground relating to the location of the land and its nature being an agricultural land. The only ground taken by the Revenue is that the land has been converted and used by the purchaser for industrial purposes. We note that the issue is squarely covered by the decision of the Hon'ble Jurisdictional Gujarat High Court in the case of CIT vs. Rajshibhai Meramanbhai Odedra (2014) 42 Taxmann.com 497 (Guj.), wherein, the Hon'ble High Court has held that merely because the agricultural land was sold in favour of non-agriculturist in breach of law prevailing the State, said land would not lose its character as agricultural land and hence could not be treated as capital asset. Further, the Coordinate Surat Bench of the Tribunal in the case of Bhadrabala Dhimantraai Joshi vs. ACIT in ITA No.126/SRT/2025 vide order dated 26/09/2025 has in identical facts and circumstances has held that since the land was neither converted nor developed for non-agricultural purposes prior to its sale, hence the same would not lose its character as an agricultural land and would not fall in the definition of capital asset. In view of the aforesaid legal position, there is no merit in the appeal of the Revenue and the same is, accordingly, dismissed.

7. Now, coming to the appeal of the assessee in ITA No.1602/ Ahd/2025, the assessee has raised the following various legal grounds of appeal:

" 1. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in passing order after limitation period. The ground raised before CIT(A) has not been adjudicated by CIT(A).

2. On the facts and circumstances of the case as well as law on the subject, the Income Tax Officer, Ward 2(1), Bharuch has erred in assuming jurisdiction over assessee's case by taking up the proceedings u/s. 147/148/148A.

3. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in re-opening assessment u/s. 147 by issuing notice u/s. 148 of the I.T. Act, 1961.

4. On the facts and circumstances of the case as well as law on the subject, the learned Pr. CCIT has erred in mechanically approving the order u/s. 148A(d).

5. On the facts and circumstances of the case as well as law on the subject, the learned Pr. CCIT has erred in granting the approval u/s. 151 without generating DIN.

6. It is therefore prayed that assessment framed u/s 147 r.w.s 144C of the I.T. Act may please be quashed.

7. Appellant craves leave to add, alter or delete any ground(s) either before or in course of hearing of the appeal."

8. Since we have adjudicated the issue on merits while adjudicating the appeal of the Revenue, therefore, at this stage, we are not inclined to go into the legal grounds as the same. at this stage, have been rendered as academic in nature. The legal grounds raised by the assessee are kept open with liberty to the assessee to raise the same at appropriate stage/level, if need be.

9. With the above observations, both the appeals, i.e. appeal of the Revenue as well that of the Assessee are hereby dismissed.

Order pronounced in the Open Court on 09/03/2026.

Sd/-
(Narendra Prasad Sinha)
Accountant Member

Sd/-
(Sanjay Garg)
Judicial Member

अहमदाबाद/Ahmedabad, दिनांक/Dated 09/03/2026
टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/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 , सूरत /AR, ITAT, Surat/Ahmedabad.
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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