



आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE  
BEFORE SHRI RAMA KANT PANDA, VICE PRESIDENT  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं / ITA No.2434 & 2418/PUN/2025  
निर्धारण वर्ष /Assessment Year: 2018-19

Madhukar Ganpat Dhakwal, 1/B at Tilore Post Vighawali Tal Mangaon, Wighawali B.O Tilore, Raigarh Maharashtra  PAN-BFOPD7627G	<b>Vs.</b>	ITO, Ward 8(5), Raigad
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

Assessee by:	CA Hiral D. Sejpal & Ankita P. Gorde
Department by:	Smt. Sonal L Sonkavde, Addl-CIT
Date of hearing:	03-02-2026
Date of Pronouncement:	16-03-2026

**आदेश/ORDER**

**PER SHRI VINAY BHAMORE, JUDICIAL MEMBER:**

These two appeals filed by the assessee are directed against the same order dated 25.08.2025 passed by Ld. [CIT(A)] NFAC, Delhi for the Assessment Year 2018-19.

ITA No. 2434/PUN/2025

2. Assessee has raised following grounds of appeal:-

1. Ground No. 1:

1.1. On the facts and circumstances of the cases and in law, the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [the Ld. CIT(A)] failed to consider that the Income Tax Officer, Ward 7, Panvel ('the AO') had erred in issuing notice under section ('u/s') 148 of the Income Tax Act, 1961 ('the Act') and order u/s 148A(d) of the Act beyond the jurisdiction as specified u/s 151 of the Act. 1.2. The AO erred in passing the order u/s 148A(d) of the Act and issuing notice u/s 148 of the Act, without following the Jurisdictional Hon'ble High Court's decision in the case of Hexaware Technologies Limited vs. Assistant Commissioner of Income Tax, TS-298-HC 2024(BOM) thereby amounting to contempt of court.

1.3. Therefore, the Appellant humbly prays that the assessment order passed u/s 147 r.w.s 144 r.w.s 1448 of the Act be held void-ab-initio.

2. Ground No. 2:

2.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to consider that the AO issued notice u/s 148 of the Act without obtaining a valid approval u/s 151 of the Act.

2.2. Therefore, the Appellant respectfully prays that the assessment order u/s 147 r.w.s 144 r.w.s 1448 of the Act be held void-ab-initio.

3. Ground No. 3:

3.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not admitting the appeal and not issuing show cause notice in respect of:

3.1.1. Non-payment of advance tax in respect of appeal filed against the Assessment Order u/s 147 r.w.s 144 r.w.s 148 of the Act.

3.2. Therefore, the Appellant respectfully prays that the Orders passed by the Ld. CIT(A) u/s 250 of the Act dated 25th August 2025 is bad in law.

4. Ground No.4:

4.1. On the facts and circumstances of the case and in law, the Ld. AO erred in treating the rural agricultural land as a capital asset and consequently made additions amounting to Rs. 63,65,000/-

4.2. Therefore, the Appellant prays that the additions amounting to Rs. 63,65,000/- u/s 50C of the Act be deleted.

5. Ground No. 5:

5.1. On the facts and circumstances of the case and in law, the Ld. AD erred in treating the said land as "Gavat Pad" (Grass not in use) Land, without considering the fact that for the year under consideration the said land was used for agricultural activities.

5.2. Thus, the Appellant prays that additions amounting to Rs. 63,65,000/- u/s SOC of the Act be deleted.

6. Ground No. 6:

6.1. On the facts and circumstances of the case and in law, the Ld. AO erred in making additions amounting to Rs. 63,65,000/- u/s 50C of the Act without considering:

6.1.1. The stamp duty value of the land is not Rs. 63,65,000/-

6.1.2. The full value of consideration of the land is Rs. 20,00,000/-

6.1.3. The land is held for more than 24 months

6.1.4. The Indexed cost of acquisition of the land

6.2. Therefore, the Appellant prays that the addition amounting to Rs. 53,65,000/- is bad in law.

7. Ground No. 7:

7.1. The Appellant craves leave to add to, alter, and/or amend the foregoing grounds of appeal.

3. Facts of the case in brief are that the assessee is an individual and has not furnished his return of income for the year under consideration. On the basis of information that the assessee has sold immovable property for ₹ 63,65,000/- and the profit or gain has not been offered to tax since no income tax return filed, the case was reopened and notice under section 148 A(b) of the IT act was issued . The assessee in reply to notice under section 148 A (b) of the IT act submitted that the land in question is an agricultural land and not a capital asset therefore question of deriving any capital gain does not arise. It was also explained by the assessee that the impugned agricultural land was sold for ₹ 20 lakh only. However the assessing officer was of the view that the land is a grass land and not cultivated by the assessee and considered the stamp duty value of ₹ 63,65,000/- as the sales consideration. After passing order under section 148 A (d) of the IT act, Notice under section 148 of the IT act was issued on 6 April 2022. The assessee did not furnish return in

response to notice under section 148 of the IT act. After considering the earlier submissions and reply of the assessee the assessing officer vide

order dated 25<sup>th</sup> of February 2024 completed the assessment under section 147 read with section 144 read with section 144 B of the IT act and determined taxable income at ₹ 63,65,000/-. The above said income includes addition of ₹ 63,65,000/- on account of short term capital gain on sale of immovable property.

4. Being aggrieved with the above assessment order the assessee preferred an appeal before the learned CIT appeal. Since the assessee has not paid any advance tax as contemplated under section 249(4)(b) of the IT act learned CIT appeal dismissed the appeal filed by the assessee without admitting the same for adjudication.

5. It is the above order against which the assessee is in appeal before this Tribunal.

6. We have heard learned counsel from both the sides and perused the material available on record including the paper book furnished by the assessee. In this regard we find that learned CIT (A) has dismissed the appeal filed by the assessee on technical ground without admitting the

same for adjudication, on the ground that the assessee has not paid any advance tax as contemplated as per clause (b) of subsection 4 of section

249 of the IT act. In this regard we find that the assessee is not a regular income tax payee and it is his contention that during the year under consideration he sold agricultural land for a consideration of ₹ 20 lakh

only. However we find that the stamp duty value for the purposes of registration of above agricultural land was ₹ 63,65,000/-. We also find that it was the contention of learned counsel of the assessee that the above agricultural land is situated beyond the prescribed limits and is a rural agricultural land and not a capital asset therefore profit or gain if any arising from its transfer is not liable to income tax and consequently the assessee is not liable to make payment of any advance tax. The assessee also raised legal grounds before the bench.

7. In this regard we find that under identical facts a coordinate bench of this Tribunal in the case of Ms. Aamna Altaf Hussain Sharif vs.

Income - tax Officer [2025] 176 taxmann.com 112 (Mumbai - Trib.) [26-06-2025] has allowed the appeal of the assessee by observing as under:-

*5. Against the said order the assessee filed appeal before the Ld. CIT (A), however, the Ld. CIT(A) invoked section 249(4)(b) of the Act holding that appeal of the assessee is not admitted because the assessee has not paid the taxes or advance tax. Here in this case, the assessee has not filed the return of income. Therefore, section 249(4)(b) of the Act does not apply. Under clause (b) where no return has been filed, assessee is required to pay the amount equal to the advance tax which was payable by him or an application should be made on behalf of the assessee to the Ld. CIT(A) showing/giving good and sufficient reason for admitting of the appeal. From the perusal of the assessment order it is seen that although it is an ex-parte order the AO has made addition not only on account of professional fee but also estimated the turnover based on service tax return and also expenditure incurred to credit card and also estimated turnover. There is*

*duplication of additions which has been made. The AO should have at least either estimated the professional income or estimated the net profit but cannot make various additions in the manner in which he has made. Now the Ld. CIT (A) should have at least given a show cause notice to the assessee to explain as to why the advance tax has not been paid and even the*

*Ld. CIT(A) has not specified as to what was the amount on which advance tax should be paid. In these facts invocation of section 249 (4) (b) is not justified. Accordingly, in the interest of justice the matter is remanded back to the file of the Ld. CIT(A) to decide the issue afresh in accordance with law after giving proper opportunity of hearing to the assessee.*

*6. The assessee is also directed to cooperate in the proceedings before the Ld. CIT(A) and substantiate his case.*

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

8. Respectfully following the above decision passed in the case of Ms. Aamna Altaf Hussain Sharif vs. Income - tax Officer [2025] 176 taxmann.com 112 (Mumbai-Trib.)[26-06-2025] we are of the considered opinion that the assessee was not liable to make payment of advance tax since according to the assessee there was no admitted/ agreed income on which the assessee was obliged to make payment of advance tax . Therefore the invocation of section 249 (4)(b) is not justified.

9. In view of above discussion and Considering the totality of the facts of the case and in the interest of justice and with the consent of both the parties we deem it appropriate to set aside the order passed by learned CIT (A) and restore the matter back to his file with a direction to decide the appeal afresh and as per fact and law after providing reasonable opportunity of hearing to the assessee. The assessee is also

hereby directed to respond to the notices issued by learned CIT appeal in this regard and to produce evidences documents and submissions in support of all the grounds of appeal including those raised before us, without taking any adjournment under any pretext otherwise learned

CIT(A) shall be at liberty to pass appropriate order as per law. The grounds of appeal raised by the assessee are allowed for statistical purposes.

ITA NO 2418/PUN/2025

10. The assessee admitted before the bench that this is a duplicate appeal for Asstt Year 2018-19 involving the same grounds filed inadvertently physically against the same first appellate order dt 25-08-2025. Since we have already adjudicated & decided the online appeal ITA No. 2434/PUN/2025 filed by the assessee for Asstt Yr 2018-19, this duplicate appeal becomes infructuous hence dismissed.

11. In the result, the appeal filed by the assessee in ITA No. 2434/PUN/2025 is allowed for statistical purposes and ITA No. 2418/PUN/2025 is dismissed.

Order pronounced on this 16<sup>th</sup> day of March, 2026.

Sd/-  
**(RAMA KANT PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 16<sup>th</sup> March, 2026.

*Neeta*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT/CIT concerned.
  
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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