

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No. 528/AHD/2026
Assessment Years: 2015-16**

Suraj Jayantilal Patel L/H of Late Jayantilal Joitaram patel, 29-30 Ankur Co Op House Society, N H No. 8, Saijpur Bogha, Ahmedabad Gujarat - 382345 [PAN – AFTPP5830R] (Appellant)	Vs.	Income Tax Officer Ward 7(2)(1), Ahmedabad, Gujarat - 380051 (Respondent)
Assessee by	Shri R B Patel, AR	
Revenue by	Shri Abhijit, SR-DR	
Date of Hearing	07.04.2026	
Date of Pronouncement	21.04.2026	

ORDER

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

This appeal is filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as ‘CIT(A)’] dated 12.01.2026 for the Assessment Year (A.Y.) 2015-16 in the proceeding u/s 147 r.w.s. 144B of the Income Tax Act.

2. The brief facts of the case are that the assessee had filed his return of income for A.Y. 2015-16 on 29.12.2015 declaring total income of Rs.1,37,330/-. The AO had received an information from Investigation Wing about sale of land by the assessee situated at Hanspura Village,

Khata No. 74, Reveue Survey no. 113 on 25.07.2014 for a consideration of Rs. 6,82,53,000/-. The assessee was a co-owner of the said land and no capital gain was offered in the return. Therefore, the case of the assessee was reopened u/s. 147 of the Act. In the course of assessment, the assessee had explained that neither the captioned land was sold to anyone nor any Power of Attorney (POA) was executed in favour of any person for sale of the land. It was explained that the sale deed was executed using POA and forged signature by a notorious land grabbing gang. The assessee had filed a special civil suit and the Ld. Principal Senior Civil Judge, Ahmedabad (Rural), Mirzapur had passed an order dated 03.06.2020 and declared the sale deed as void. It was contended that the assessee had neither sold the land nor received any amount in respect of sale consideration and considering the fact that sale deed was declared as void, no capital gain had arisen in the hands of the assessee. The AO, however, considering the fact that the defendants of the Civil Suit had filed an appeal before the Hon'ble Gujarat High Court and the dispute about the title of the land was still not finalised, had made the addition in the hands of the assessee on protective basis in respect of capital gain on sale of land. The AO had considered the entire proportionate sale proceeds of Rs. 3,41,26,500/- as income of the assessee. Accordingly, the assessment was completed u/s. 147 r.w.s. 144B of the Act, on 25.09.2021 at total income of Rs. 3,42,63,830/-.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the first appellate authority, which was decided by the learned CIT(A), vide the impugned order and the appeal of the assessee was dismissed.

4. Now the assessee is in second appeal before us. The following grounds have been taken in this appeal:

1. *The order passed by the Ld. CIT(A) is against law, equity & justice.*
2. *The Ld. CIT(A) has erred in law and on facts in confirming additions of Rs. 3,41,26,500/- made on protective basis without considering facts on records and submission with evidences made in right perception.*
3. *The Ld. CIT(A) has grossly erred in confirming the additions of Rs. 3,41,26,500/- made on protective basis considering only fact that Honorable Gujarat High Court admitted appeal filed against the order of city civil court and same is under progress ignoring other facts.*
4. *The Ld. CIT(A) has erred in law and/or on facts to confirm addition on protective basis without appreciating the fact that City Civil Court after considering facts of the case declared "sale deed Void".*
5. *The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.*

5. Shri R B Patel the Ld. AR of the assessee submitted that the assessee had neither sold the land nor had authorized any other person by any POA to sale the land. He submitted that the sale deed was a forged document and the Ld. Principal Senior Civil Judge, Ahmedabad (Rural) vide order dated 03.06.2020 had declared the sale deed as "Void". Under the circumstances, the AO was not correct in making addition in the hands of the assessee on account of capital gain on the sale of land. The Ld. AR submitted that the AO did not examine the purchaser of the land and no corroborative evidence for any consideration for sale of land being received by the assessee, was brought on record. The Ld. AR contended that the sale deed under question was executed by fraud and the lower court had treated the same as void. Under the circumstances, no addition for any capital gain, even on protective basis, was called for in the hands of the assessee.

6. Per Contra, Shri Abhijit, the Ld. SR-DR, submitted that the dispute about the title of the land was still pending in the High Court and, therefore, the AO had made the addition on protective basis in order to safeguard the interest of revenue. He, therefore, supported the order of the lower authorities.

7. We have considered the rival submissions. There is no dispute to the fact that the sale deed on the basis of which addition for capital gain was made in the hands of the assessee, was declared as void by the order dated 03.06.2020 passed by the Principal Senior Civil Judge, Ahmedabad [Rural], Mirzapur. A copy of the said order has been brought on record in the paper book filed by the assessee. It transpires therefrom that the sale deed was effected on the basis of forged POA and forged signature and the PAN-card of the assessee was not enclosed with the sale deed. Further, the entire sale consideration of Rs.6,82,53,000/- was allegedly paid in cash for which no receipt of the assessee was brought on record before the Court. The Ld. Principal Senior Civil Judge has held **“the registered sale deed as void due to non-payment of consideration amount and due to fraud exercised by defendants in the registration of the documents”**. In view of this specific finding, the AO should have examined about the payment of consideration amount by the buyers before making any addition in the hands of the assessee. No inquiry was made by the AO from the buyers and the source of payment of sale consideration of Rs. 6,82,53,000/- was not examined. The Revenue has not brought on any record any evidence that the Department had initiated any proceeding against the buyer(s) to examine their source of investment. Merely because the buyers had filed an appeal before the

Hon'ble Gujarat High Court and the title of the land under question was still under dispute, the AO was not correct in making the addition on account of capital gain in the hands of the assessee, even on protective basis.

8. There is no dispute to the fact that the sale deed on the basis of addition for capital gain has been made, stands declared as void. The protective addition was made in the hands of the assessee to protect the interest of revenue in case the Hon'ble Gujarat High Court decides the ownership of the land against the assessee. In the present case the re-assessment proceeding to tax the capital gain on sale of the land was already initiated by the AO within the prescribed time limit. Therefore, the Department will be free to initiate proceeding u/s. 283 of the Income Tax Act, 2025 in accordance with the findings of the Hon'ble High Court. Hence, the apprehension of the Revenue is unfounded. So far as merit of the addition is concerned, no evidence for receipt of any amount in respect of sale consideration by the assessee, was brought on record. Further, the AO was also not correct in treating the entire sale consideration of Rs.3,41,26,500/- as capital gain arising to the assessee, without allowing any deduction towards cost of acquisition. The land was purchased by assessee in the year 2005 and the AO should have allowed deduction for cost of acquisition, even if he wanted to tax the capital gain on protective basis. Be that it may, the fact remains that no capital gain arose in the hands of the assessee as the sale transaction was declared as void. Therefore, the addition of Rs.3,41,26,500/- as made by the assessee on account of LTCG on sale of land, **is deleted**. The grounds taken by the assessee are allowed.

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

Order pronounced in the Court on 21/04/2026 at Ahmedabad.

Sd/-
(SAJAY GARG)
Judicial Member

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Dated – 21st April, 2026

Neelesh, Sr. PS

(True Copy)

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 / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad