**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"D" BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &**
**SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1655/Ahd/2025
(Assessment Year: 2019-20)

| | | |
|---|---|---|
| Jignesh Harshadbhai Patel,<br>3, Shiv Residency,<br>B/h. Shukan-6 Flat,<br>Opp. Science City, Sola,<br>Ahmedabad-380060 | Vs. | Income Tax Officer,<br>Ward-4(2)(3),<br>Ahmedabad |
| [PAN No.AQMPP9133D] | | |
| **(Appellant)** | .. | **(Respondent)** |

| | |
|---|---|
| **Appellant by :** | Shri Mehul Thakker, CA & Shri Prakash Patel, AR |
| **Respondent by:** | Shri Rameshwar P Meena, Sr. DR |

| | |
|---|---|
| **Date of Hearing** | 08.04.2026 |
| **Date of Pronouncement** | 15.05.2026 |

O R D E R

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short "Ld. CIT(A)"), National Faceless Appeal Centre (in short "NFAC"), Delhi vide order dated 17.06.2025 passed for A.Y. 2019-20.

2. The assessee has raised the following grounds of appeal:

*"1. The Ld. CIT(A) has erred in law and on facts in dismissing the appeal ex parte without appreciating the genuine cause for non-appearance, thereby violating principles of natural justice.*

*2. The Ld. CIT(A) has erred in law and on facts in upholding the reopening under section 147 of the Act, which is bad in law and void ab initio.*

*3. The Ld. CIT(A) has erred in law and on facts in confirming addition of Rs. 44,21,768/- under the head "Long Term Capital Gain" despite the fact that the land sold was agricultural land and not a "capital asset" within the meaning of section 2(14) of the Act.*

*4. The Ld. CIT(A) has erred in law and on facts in upholding application of section 50C by reverse calculation of jantri value.*

*5. The Ld. CIT(A) has erred in law and on facts in confirming addition of Rs. 22,08,333/- under section 69A of the Act being alleged cash receipt, without any corroborative evidence and solely relying upon third-party statements and documents, which were never confronted to the appellant, thereby denying opportunity of cross-examination.*

*6. The appellant craves leave to add, alter, amend, or modify any of the above grounds at the time of hearing."*

3. The brief facts of the case are that the assessee is an individual who filed return of income under section 139(1) of the Income-tax Act, 1961 ("the Act") for Assessment Year 2019-20 on 23.10.2019 declaring total income of Rs.1,13,410/-. Subsequently, the case of the assessee was reopened under section 147 of the Act on the basis of information received from the Investigation Wing regarding alleged unaccounted transactions with Chiripal Group in connection with sale of land situated at Village Dholi bearing Survey No.288 (Old)/457 (New), admeasuring 21,145 sq. meters. The information suggested that the land was sold to Dholi Integrated Spinning Park Pvt. Ltd. and apart from cheque consideration of Rs. 45,00,000/-, additional unaccounted cash consideration of Rs. 66,25,000/- was allegedly paid to the sellers. Since the assessee was one of the co-owners having 1/3$^{rd}$ share in the property, it was alleged that the assessee had received cash of Rs. 22,08,333/- which was not disclosed in the return of income. Accordingly, the Assessing Officer issued notice under section 148 of the Act on 31.03.2023 and in response thereto the assessee filed return of income on 02.05.2023 declaring the same income as originally filed.

4. During the course of reassessment proceedings, the Assessing Officer asked the assessee for details regarding the sale transaction. In response, the assessee furnished copy of purchase deed showing acquisition of the land for Rs.24,11,000/- and sale deed reflecting sale

consideration of Rs.45,00,000/-. The assessee contended that the land sold was agricultural land situated beyond the specified municipal limits and therefore did not fall within the definition of "capital asset" under section 2(14) of the Act. The assessee also submitted that no cash consideration had been received from Chiripal Group and that section 50C of the Act could not be applied on hypothetical or reverse calculation basis. The assessee relied upon certificate issued by Talati-cum-Mantri of Gram Panchayat Dholi as well as Google map data to demonstrate that the land was agricultural land situated outside the notified urban limits.

5. The Assessing Officer, however, rejected the explanation furnished by the assessee. The Assessing Officer observed that the land was sold to a company namely Dholi Integrated Spinning Park Pvt. Ltd., which according to him indicated that the land was effectively treated as non-agricultural land. The Assessing Officer further noticed that stamp duty of Rs. 6,50,000/- had been paid on the transaction and by applying stamp duty rate of 4.9%, worked out the jantri value of the property at Rs. 1,32,65,306/-. The Assessing Officer compared the jantri rates applicable for agricultural and commercial lands in Dholi village and came to the conclusion that the stamp valuation adopted by the Sub-Registrar indicated that the land was treated as non-agricultural/commercial land for stamp duty purposes. Proceeding on such reasoning, the Assessing Officer held that the land constituted a "capital asset" within the meaning of section 2(14) of the Act and accordingly invoked section 50C of the Act by adopting stamp duty valuation of Rs.1,32,65,306/- as deemed sale consideration. Since the assessee held 1/3rd share in the property, the Assessing Officer computed long-term capital gain of Rs.44,21,768/- in the hands of the assessee. The Assessing Officer also observed that no documentary evidence regarding cost of acquisition was furnished and

therefore cost was effectively taken at nil for computation purposes. Penalty proceedings under section 270A of the Act were also initiated by the Assessing Officer for alleged under-reporting and misreporting of income.

6. Apart from the above addition, the Assessing Officer also made separate addition of Rs.22,08,333/- under section 69A read with section 115BBE of the Act on account of alleged unexplained cash receipts. The Assessing Officer relied upon handwritten notings allegedly found from the premises of Shri Kailashnath Upadhyay, an employee of Chiripal Group, during survey/search proceedings. According to the Assessing Officer, the said documents reflected payment of on-money of Rs.66,25,000/- in cash to the sellers of the land and the statement of Shri Kailashnath Upadhyay recorded during the search proceedings allegedly confirmed the cash component. On this basis, the Assessing Officer concluded that the assessee had received unexplained cash of Rs.22,08,333/- being 1/3rd share of the alleged cash payment and accordingly treated the same as unexplained money under section 69A of the Act taxable under section 115BBE. The Assessing Officer further observed that provisions of section 269SS were also attracted in the case.

7. Aggrieved by the reassessment order, the assessee preferred appeal before the Ld. CIT(A) challenging both the validity of reopening as well as additions made on merits.

8. During the appellate proceedings, the Ld. CIT(A) issued several notices fixing the matter for hearing on different dates including 16.05.2024, 13.06.2024, 04.07.2024 and 28.05.2025. However, according to the Ld. CIT(A), there was no compliance or effective representation on

behalf of the assessee. The Ld. CIT(A) therefore observed that the assessee was not interested in prosecuting the appeal and proceeded to decide the appeal ex-parte on the basis of material available on record.

9. While adjudicating Grounds No.1 to 3 relating to reopening under section 147, addition of long-term capital gain and addition under section 69A, the Ld. CIT(A) held that in absence of any rebuttal or supporting evidence from the assessee during appellate proceedings, there was no reason to interfere with the findings recorded by the Assessing Officer. The Ld. CIT(A) reproduced relevant portions of the assessment order and observed that the Assessing Officer had elaborately discussed reasons for treating the land as capital asset and for invoking section 50C of the Act. The Ld. CIT(A) further noted that the Assessing Officer had relied upon seized documents and statement of Shri Kailashnath Upadhyay establishing payment of cash consideration in the land transaction. Since the assessee did not furnish any material to disprove the findings of the Assessing Officer, the additions of Rs.44,21,768/- on account of long-term capital gain and Rs.22,08,333/- under section 69A read with section 115BBE of the Act were confirmed. With regard to Grounds No.4 and 5 relating to non-supply of incriminating material and statements relied upon by the Assessing Officer, the Ld. CIT(A) observed that two show-cause notices dated 12.03.2024 and 26.03.2024 had been issued during assessment proceedings and according to CIT(Appeals), relevant extracts of seized material and statement of Shri Kailashnath Upadhyay had already been reproduced in the assessment order. Since the assessee failed to produce any evidence to establish otherwise, the Ld. CIT(A) dismissed these grounds and held that adequate opportunity had been granted during assessment proceedings.

10. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee.

11. We have heard the rival contentions and perused the material on record.

12. Ground No.1 raised by the assessee relates to dismissal of appeal by the Ld. CIT(A) ex-parte without appreciating the reasons for non-appearance. The same is general in nature and does not call for separate adjudication in view of our findings on merits in subsequent grounds.

13. Ground No.2 relates to validity of reopening under section 147 of the Act. At the time of hearing, the Ld. Counsel for the assessee fairly submitted that the said ground is not being pressed. Accordingly, Ground No.2 is dismissed as not pressed.

**Ground No.3 relates to confirmation of addition of Rs.44,21,768/- made under the head "Long Term Capital Gain" on the allegation that the land sold by the assessee constituted "capital asset" within the meaning of section 2(14) of the Act**

14. The facts emerging from record show that the assessee along with co-owners sold land situated at Village Dholi bearing Survey No.288 (Old)/457 (New), admeasuring 21,145 sq. meters, to Dholi Integrated Spinning Park Pvt. Ltd. The Assessing Officer treated the land as non-agricultural land mainly on the ground that the purchaser was a company and therefore according to the Assessing Officer, the land could not retain agricultural character. The Assessing Officer further relied upon stamp duty valuation and concluded that the land was treated as non-agricultural/commercial land for stamp valuation purposes. On this basis,

the Assessing Officer held that the land constituted "capital asset" under section 2(14) of the Act and consequently brought the transaction to tax under the head capital gains.

15. However, after considering the documentary evidences placed before us, we are of the considered view that the land sold was agricultural land situated beyond specified municipal limits and therefore outside the ambit of "capital asset" under section 2(14) of the Act. The assessee has placed on record Talati Certificate issued by Dholi Gram Panchayat, Google Map showing aerial distance from nearest municipality, 7/12 extracts and details of agricultural produce including "Makai" cultivation reflected at Page 12 of the Paper Book. The evidences placed on record establish that agricultural operations were being carried out on the land and the land retained its agricultural character till the date of transfer.

16. Most importantly, we notice that in the cases of co-owners of the very same property, the Department itself has accepted the land as agricultural land for the impugned assessment year. The Counsel for the assessee has placed on record assessment orders of co-owners wherein this proposition has been accepted. It has specifically been pointed out that in the case of co-owner Harshadbhai Patel, the issue relating to distance from nearest municipality was duly examined by the Department and thereafter the land was accepted as agricultural land not falling within the definition of "capital asset" under section 2(14) of the Act. Once the Revenue itself has accepted identical land as agricultural land in the hands of co-owners arising from the same transaction, there cannot be different treatment in the hands of the present assessee in absence of distinguishing facts.

17. We further find that the Assessing Officer has merely proceeded on presumptions arising from the fact that the purchaser was a company and that subsequently permission under section 63AA of the Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act may have been sought by purchaser for industrial use. However, future intended use by purchaser cannot determine the nature of land on the date of transfer. The relevant consideration under section 2(14) of the Act is the character and location of land on the date of sale. Merely because agricultural land is sold to a non-agriculturist or company does not automatically convert agricultural land into non-agricultural land for purposes of Income-tax Act.

18. We derive support from the decision of Ahmedabad Bench of the Tribunal in the case of ITO vs. Urmila Bharatbhushan Agrawal in ITA No.417/Ahd/2023 wherein after considering identical controversy involving agricultural land sold under section 63AA permission, the Tribunal held that the land retained its agricultural character and therefore no capital gains tax was leviable.

19. We note that in the decision of Ahmedabad ITAT in the case of Rasilaben Yogeshbhai Patel vs. ITO in ITA No.631/Ahd/2019 wherein the Coordinate Bench held as under:

> *"Therefore, in our considered view when, the long term capital gain and exemption claimed by the co-owner has been accepted, then the assessee cannot be treated indifferently."*

20. Accordingly, considering the entirety of facts and evidences placed on record including Talati Certificate, 7/12 extracts, agricultural produce details, Google Map and the accepted position in the hands of co-owners, we hold that the land sold by the assessee was agricultural land not constituting "capital asset" within the meaning of section 2(14) of the Act.

Consequently, no capital gains tax could be levied on transfer of such land. The addition of Rs.44,21,768/- made by the Assessing Officer under the head "Long Term Capital Gain" is therefore directed to be deleted. Ground No.3 raised by the assessee is accordingly allowed.

**Ground No.4 relates to action of the Assessing Officer in invoking provisions of section 50C of the Act by adopting alleged jantri/stamp duty value through reverse calculation method**

21. We find that the Assessing Officer invoked section 50C of the Act by treating the stamp duty value of the property at Rs.1,32,65,306/- primarily on the basis of stamp duty amount of Rs.6,50,000/- collected by the Sub-Registrar. On such basis, the Assessing Officer proceeded to recompute sale consideration under section 50C and consequently enhanced taxable capital gains.

22. However, after careful consideration of the facts of the case, we find that the very invocation of section 50C of the Act is legally unsustainable. At this stage, it would be relevant to reproduce section 50C(1) of the Act:

> *"Where the consideration received or accruing as a result of transfer by an assessee **of a capital asset**, being land or building or both, is less than the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer."*

23. A plain reading of the above provision makes it abundantly clear that section 50C of the Act applies only where the asset transferred is "capital asset". Once we have already held while adjudicating Ground No.3 that the land sold by the assessee was agricultural land outside the

scope of "capital asset" under section 2(14) of the Act, the deeming fiction contained in section 50C automatically becomes inapplicable.

24. Apart from the above, we also find merit in the contention advanced by the assessee that the Assessing Officer adopted stamp valuation merely on reverse calculation basis without any direct reference from the stamp authority. The assessee has also demonstrated that the purchaser had sought permission under section 63AA of Gujarat Tenancy and Agricultural Lands Laws for industrial use and therefore enhanced stamp duty valuation was adopted under local land laws for stamp duty purposes. Such subsequent treatment under local land laws cannot automatically determine nature of land under Income-tax Act.

25. We further notice that no addition under section 50C has been made in the hands of co-owners arising from the very same transaction. The Coordinate Bench in the case of Rasilaben Yogeshbhai Patel vs. ITO (ITA No.631/Ahd/2019) has clearly held that where treatment in case of co-owner has been accepted by the Revenue, another co-owner cannot be subjected to inconsistent treatment in respect of same transaction.

26. Accordingly, considering the fact that the land itself does not fall within the definition of "capital asset" and further considering that the Assessing Officer adopted stamp duty valuation merely on presumptive reverse calculation basis, we hold that provisions of section 50C of the Act could not have been invoked in the present case. The addition made by invoking section 50C is therefore directed to be deleted.

27. Ground No.4 raised by the assessee is accordingly allowed.

**Ground No.5 relates to addition of Rs.22,08,333/- made under section 69A read with section 115BBE of the Act on account of alleged receipt of on-money in cash.**

28. Once we have already held hereinabove that the land sold by the assessee was agricultural land not constituting "capital asset" under section 2(14) of the Act, the very source of alleged receipt itself becomes exempt transaction not chargeable to capital gains tax.

29. The Coordinate Bench of Delhi Tribunal in ACIT vs. Kamlesh Kumar Rathi in ITA Nos.822 & 823/Del/2018 has categorically held as under:

> *"Once, nature and character of land sold is established as agricultural land not to be treated as capital asset u/s. 2(14)(iii) of the Act, any income arising out of sale of such land -whether by way of declared sale consideration or on account of on-money, would partake the character of exempt income, as the source of both the declared sale consideration and the on-money received is the same, viz., sale of agricultural land."*

30. The Tribunal further held:

> *"That being the factual position, the income derived from sale of agricultural land, which is not a capital asset, cannot be made taxable."*

31. The ratio laid down in the aforesaid decision squarely applies to the facts of the present case. Once the underlying asset itself is held to be agricultural land outside the ambit of "capital asset", there remains no justification for separately taxing alleged on-money receipts arising from the same transaction.

32. Accordingly, we direct deletion of addition of Rs.22,08,333/- made under section 69A read with section 115BBE of the Act.

33. Ground No.5 raised by the assessee is accordingly allowed.

34. In the result, the appeal of the assessee is partly allowed.

| **This Order pronounced in Open Court on** | **15/05/2026** |
|---|---|

| **Sd/-** | **Sd/-** |
|---|---|
| **(ANNAPURNA GUPTA)** | **(SIDDHARTHA NAUTIYAL)** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

Ahmedabad; Dated 15/05/2026

*TANMAY, 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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

**आदेशानुसार**/ BY ORDER,

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