

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

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.82/Ahd/2025
(Assessment Year: 2018-19)

Clayking Minerals LLP, 69, Sardar Patel Society, Bhaupura, Kadi, Mehsana, Gujarat-382715	Vs.	Income Tax Officer, Ward-5, Mehsana
[PAN No.AAMFC6828Q]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Hem Chhajer, AR
Respondent by:	Shri Kalpesh Rupavatia, Sr. DR

Date of Hearing	30.04.2025
Date of Pronouncement	27.05.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeal), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 17.12.2024 passed for A.Y. 2018-19.

2. The Assessee has taken the following grounds of 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 upholding the action of Ld. A.O. in not considering request of reference to the DVO.

3. The Ld. CIT(A) has erred in law and facts in upholding the addition made U/S 56(2)(x) of the Act for Rs. 72,90,880/- by the Ld. A.O. in respect of purchase of rural agricultural land.

4. The appellant Craves liberty to add, amend, alter or modify all or any grounds of appeal before final hearing.”

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3. The brief facts of the case are that the assessee filed the income tax return on 30.08.2018, declaring a loss of Rs. 1,24,010/- for the Assessment Year 2018-19. Subsequently, the case was selected for 'Limited Scrutiny' through CASS to examine whether the purchase value of a property was less than the value determined by the stamp valuation authority under section 56(2)(x) of the Act. During the course of assessment proceedings, the Assessing Officer noted that the assessee purchased a property during the relevant year for Rs. 42,72,000/-, whereas the stamp duty value of the same was Rs. 1,15,62,880/-. The assessee contended that the land in question, located at Ghanshyam Nagar Sosa, Kundal, Mahesana, was agricultural at the time of purchase on 21.09.2017. The land was later converted to non-agricultural use after obtaining permission from the Collector on 23.10.2017, and the property was registered on 26.03.2018. The assessee submitted that since the property was agricultural land at the time of purchase, it did not qualify as a “capital asset” as per section 2(14), and therefore, section 56(2)(x) was not applicable. The assessee that the nature of land at the time of purchase and its use as agricultural land excluded it from the purview of section 56(2)(x) of the Act. However, after reviewing the submissions and documents, the Assessing Officer held that although the land was purchased as agricultural, the assessee’s intention was always to use it for non-agricultural purposes, as evident from the early application and subsequent conversion. The Assessing Officer placed reliance on the Supreme Court’s decision in *Sarif Abibi Ibrahim* (204 ITR 631) in which it was held that agricultural status depends on actual use and intention, and not merely on classification in revenue records. Since the

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land was not used for agricultural purposes and was bought with a clear intention to convert it, it qualified as a capital asset. Accordingly, the officer held that the provisions of section 56(2)(x) of the Act were attracted, and the difference of Rs. 72,90,880/- between the purchase consideration and the stamp duty value was liable to be taxed as "income from other sources".

4. In appeal, CIT(Appeals) dismissed the appeal of the assessee with the following observations:

“6.1.1 Now, before me in the appellate proceedings, the appellant has argued that the land purchased is an agricultural land. The appellant has filed the deed or purchase dated 21.09.2017. Hence the appellant has argued that it is not a capital asset as per section 2(14) of the Act. The appellant has relied upon various judgments including judgment of Hon. Gujarat High Court. Hon. Gujarat High Court has given judgment that if agricultural land is transferred to a non-agriculturist, it will not cease to be agricultural land. All other judgments relied upon by the appellant are on identical fact. I have gone through the certificate of the District Collector, Surender Nagar. In the second para, it is clearly mentioned that the land have been purchased for the bona-fide industrial purposes. In another clause, it is clearly mentioned that permission has been given for non-agricultural use of the land. Hence, the case laws relied upon by the appellant are not at all applicable here. The AO has rightly treated this as non-agricultural land as there is a specific mention in the certificate of the District Collector, Surender Nagar. Hence, the addition made by the AO worth Rs.72,90,880/- is confirmed and appeal of the appellant is dismissed.”

5. Before us, the Counsel for the assessee, at the outset, submitted that Ld. CIT(A) erred in law and on facts by upholding the action of the Assessing Officer in failing to refer the matter to the Departmental Valuation Officer (DVO), despite specific requests made by the assessee. The Counsel for the assessee submitted that the assessee had objected to the valuation adopted by the AO vide letters dated 28.08.2020 and 19.04.2021, copies of which are placed in the Paper Book, and had

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specifically requested that the matter be referred to the DVO. The Counsel for the assessee submitted that the addition made without such reference renders the assessment order void and legally untenable. In support, reliance was placed on the decision of the Hon'ble Calcutta High Court in *Sunil Kumar Agarwal v. CIT* (372 ITR 83), which held that the AO, acting in a quasi-judicial capacity, is duty-bound to fairly offer the assessee an opportunity to opt for DVO valuation under section 50C, even if not specifically requested. Similarly, the ITAT Ahmedabad in *Amarshiv Construction Pvt. Ltd. v. DCIT* (ITA No. 3061/Ahd/2015) held that where the assessee disputes the stamp duty valuation, reference to the DVO under section 50C(2) becomes mandatory. The Counsel for the assessee further submitted that the addition of Rs. 72,90,880/- under section 56(2)(x) by the CIT(A) is not sustainable since the land in question was rural agricultural land purchased on 21.09.2017 for Rs. 42,72,000/-. Although the land was subsequently permitted for use for bona fide industrial purposes, such conversion was post-purchase, and therefore, the nature of the land at the time of acquisition remained agricultural.

6. In response, the Ld. DR placed reliance on the observations made by the Assessing Officer and Ld. CIT(Appeals) in their respective orders.

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

8. Section 56(2)(x) is reproduced below for ready reference:

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"In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

(x) Where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,-

(a)	any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;
(b)	any immovable property,—

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

^{72a}[(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i)	the amount of fifty thousand rupees; and
(ii)	the amount equal to five per cent of the consideration:]

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause : **Provided further** that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account ^{72b}for through such other electronic mode as may be prescribed], on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections;"

9. On a plain reading, it is seen that section 56(2)(x) of the Act mentions the term "any immovable property". Now the issue for consideration is whether "Agricultural land" (on the assumption for argument's sake that the land in question qualifies as an "agricultural land") falls within the ambit of an "immovable property" as stated in section 56(2)(x) of the Act. The term "immovable property" **has not been**

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defined in section 56(2)(x) of the Act or in any other section in the Income Tax Act. This renders the word to be interpreted in general parlance. In general understanding of the term, the word "Immovable Property" means an asset which cannot be moved without destroying or altering it. Therefore, going by the general definition, "immovable property" would, in our view, include any rural agricultural land, in absence of any specific exclusion in section 56(2)(x) of the Act. Notably, section 56(2)(x) of the Act does not use the word "capital asset". The sale of rural agricultural land is exempt in the hands of the seller since the word "capital asset" has been specifically defined to exclude agricultural land in rural areas under section 2 clause 14. Thus, sale of rural agricultural land shall not give rise to any capital gains in the hands of the seller as it is not considered as a capital asset itself. However, from the point of view of the "purchaser" of immovable property, as stated above, section 56(2)(x) mentions "***any immovable property***" which going by the plain words of the Statute, does not specifically exclude "agricultural land".

10. In **Nairin v. University of St. Andrews 1909 AC 147**, the Hon'ble Apex Court held that

"Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice"

11. In **Ombalika Das v. Hulisa Shaw [2002] 4 SCC 539**, the Hon'ble Supreme Court at paragraph No.12, held as follows:

“Resort can be had to the legislative intent for the purpose of interpreting a provision of law, when the language employed by the legislature is doubtful or susceptible of meanings more than one. However, when the language is plain and explicit and does not admit of any doubtful interpretation, in that case, we cannot, by reference to an assumed legislative intent, expand the meaning of an expression employed by the legislature”

12. Therefore, in our considered view, going by the plain words of the section 56(2)(x) of the Act, which uses the term “**immovable property**”, agricultural land cannot be taken out of the purview of section 56(2)(x) of the Act.

13. However, in the case of **Dilip Manibhai Prajapati vs. Income-tax Officer** [2024] 164 taxmann.com 224 (Ahmedabad-Trib.)([28-06-2024], the ITAT Ahmedabad held that where assessee purchased agricultural land at price lower than stamp value of land, however FMV of land determined by DVO was within 10% of purchase price, showing no significant difference from purchase consideration, no addition under section 56(2)(x) was warranted. The ITAT in the above order held that from bare perusal of section 56(2)(x), wherein any person receives an immovable property for purchase consideration which is less than the stamp duty value the difference is liable to be taxed in his hands subject to the condition that the difference does not exceed Rs.50,000/- or 10% of the consideration whichever is more. Further, the third proviso to the section clearly provides that where the stamp duty value of the immovable property is disputed by the assessee on grounds mentioned in section 50C(2), the AO may refer its valuation to the Valuation Officer.

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14. Therefore, there is merit in the contention of the assessee that where the stamp duty value of the property is disputed, the AO has to make a reference to the DVO for the purpose or valuing the same.

15. Accordingly, in light of the above observations, we hereby refer the matter to the file of the Assessing Officer with a direction to refer the matter to DVO as requested by the assessee vide Ground Number 2 raised before us.

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

This Order pronounced in Open Court on

27/05/2025

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad; Dated 27/05/2025

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